

Agenda

Environmental Protection Commission

Tuesday, April 16, 2024

Teleconference: 312-626-6799

Video Conference:

<https://us02web.zoom.us/j/82106917263?pwd=UzAxalRMZkYyUnRtTksrMEIHdW95QT09>

Meeting ID: 821 0691 7263

Passcode: EPC*0416

1963 Bell Avenue, Suite 200, Des Moines

Helmick Boardroom

Tuesday, April 16, 2024

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.

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|---|---|----------------------------|
| 1 | Approval of Agenda
Consent Agenda (*within agenda indicates proposed consent agenda item)
*9. Chapter 3, "Submission of Information and Compliance--Investigations";
Chapter 12, "Environmental Self-Audits"; Chapter 17, "Compliance and
Enforcement"; Chapter 10, "Complaints, Audits, Enforcement Options and
Administrative Penalties" – Final Rules
*10. Chapter 9, "Delegation of Construction Permitting Authority" – Final Rule
*11. Chapter 11, "Tax Certification of Pollution Control or Recycling
Property" – Final Rule
*12. Chapter 14, "Environmental Covenants" – Final Rule
*13. Chapter 15, "Cross-Media Electronic Reporting" – Final Rule
*14. Chapter 16, "Revocation, Suspension, and Nonrenewal of License for
Failure to Pay State Liabilities" – Final Rule
*15. Chapter 20, "Scope of Title—Definitions," Chapter 25, "Measurement of
Emissions," Chapter 26, "Prevention of Air Pollution Emergency Episodes,"
Chapter 28, "Ambient Air Quality Standards," Chapter 29, "Qualification in
Visual Determination of the Opacity of Emissions," Chapter 32, "Animal
Feeding Operations Field Study," Chapter 34, "Provisions for Air Quality
Emissions Trading Programs," and Chapter 35, "Air Emissions Assistance
Program" –Final Rules
*16. Chapter 21, "Compliance, Excess Emissions, and Measurement of
Emissions" – Final Rule
*17. Chapter 22, "Controlling Air Pollution" – Final Rule
*18. Chapter 23, "Air Emission Standards" – Final Rule
*19. Chapter 24, "Operating Permits" – Final Rule
*20. Chapter 27, "Certificate of Acceptance" – Final Rule
*21. Chapter 30, "Fees" – Final Rule
*22. Chapter 31, "Nonattainment New Source Review" – Final Rule
*23. Chapter 33, "Construction Permit Requirements for Major Stationary
Sources—Prevention of Significant Deterioration (PSD)" – Final Rule | (Decision) |
| 2 | Approval of the Minutes | (Decision) |
| 3 | Monthly Reports | Ed Tormey
(Information) |

4	Director's Remarks	Kayla Lyon (Information)
5	High Hazard Dams Risk Review contract with Houston Engineering Inc.-FEMA National Dam Safety Program State Assistance Grant	Jonathan Garton (Decision)
6	Contract with The University of Iowa-Shallow Lakes Monitoring, Laboratory Analysis Assistance	Noah Poppelreiter (Decision)
7	Contract with The University of Iowa-Beach Monitoring Program, Laboratory Analysis Assistance	Daniel Kendall (Decision)
8	Chapter 1, "Operation of Environmental Protection Commission"— Final Rule	Tamara McIntosh (Decision)
*9.	Chapter 3, "Submission of Information and Compliance--Investigations"; Chapter 12, "Environmental Self-Audits"; Chapter 17, "Compliance and Enforcement"; Chapter 10, "Complaints, Audits, Enforcement Options and Administrative Penalties" – Final Rules	Tamara McIntosh (Decision)
*10.	Chapter 9, "Delegation of Construction Permitting Authority" – Final Rule	Lori McDaniel (Decision)
*11.	Chapter 11, "Tax Certification of Pollution Control or Recycling Property"— Final Rule	Amie Davidson (Decision)
*12.	Chapter 14, "Environmental Covenants" – Final Rule	Amie Davidson (Decision)
*13.	Chapter 15, "Cross-Media Electronic Reporting" – Final Rule	Jim McGraw (Decision)
*14	Chapter 16, "Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities" – Final Rule	Tamara McIntosh (Decision)
*15.	Chapter 20, "Scope of Title—Definitions," Chapter 25, "Measurement of Emissions," Chapter 26, "Prevention of Air Pollution Emergency Episodes," Chapter 28, "Ambient Air Quality Standards," Chapter 29, "Qualification in Visual Determination of the Opacity of Emissions," Chapter 32, "Animal Feeding Operations Field Study," Chapter 34, "Provisions for Air Quality Emissions Trading Programs," and Chapter 35, "Air Emissions Assistance Program" –Final Rules	Christine Paulson (Decision)
*16.	Chapter 21, "Compliance, Excess Emissions, and Measurement of Emissions" – Final Rule	Jessica Reese McIntyre (Decision)
*17.	Chapter 22, "Controlling Air Pollution" – Final Rule	Christine Paulson (Decision)
*18.	Chapter 23, "Air Emission Standards" – Final Rule	Christine Paulson (Decision)
*19.	Chapter 24, "Operating Permits" – Final Rule	Christine Paulson (Decision)
*20.	Chapter 27, "Certificate of Acceptance" – Final Rule	Jim McGraw (Decision)
*21.	Chapter 30, "Fees" – Final Rule	Jim McGraw (Decision)
*22.	Chapter 31, "Nonattainment New Source Review" – Final Rule	Christine Paulson (Decision)
*23.	Chapter 33, "Construction Permit Requirements for Major Stationary Sources— Prevention of Significant Deterioration (PSD)" – Final Rule	Christine Paulson (Decision)
24.	Chapter 65, "Animal Feeding Operations" – Final Rule	Jason Marcel
25.	General Discussion	(Decision)
26.	Upcoming Meetings <ul style="list-style-type: none"> • May 21-May 22, 2024, Wapello County Field Tour & Business Meeting • June 18, 2024, Des Moines 	

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

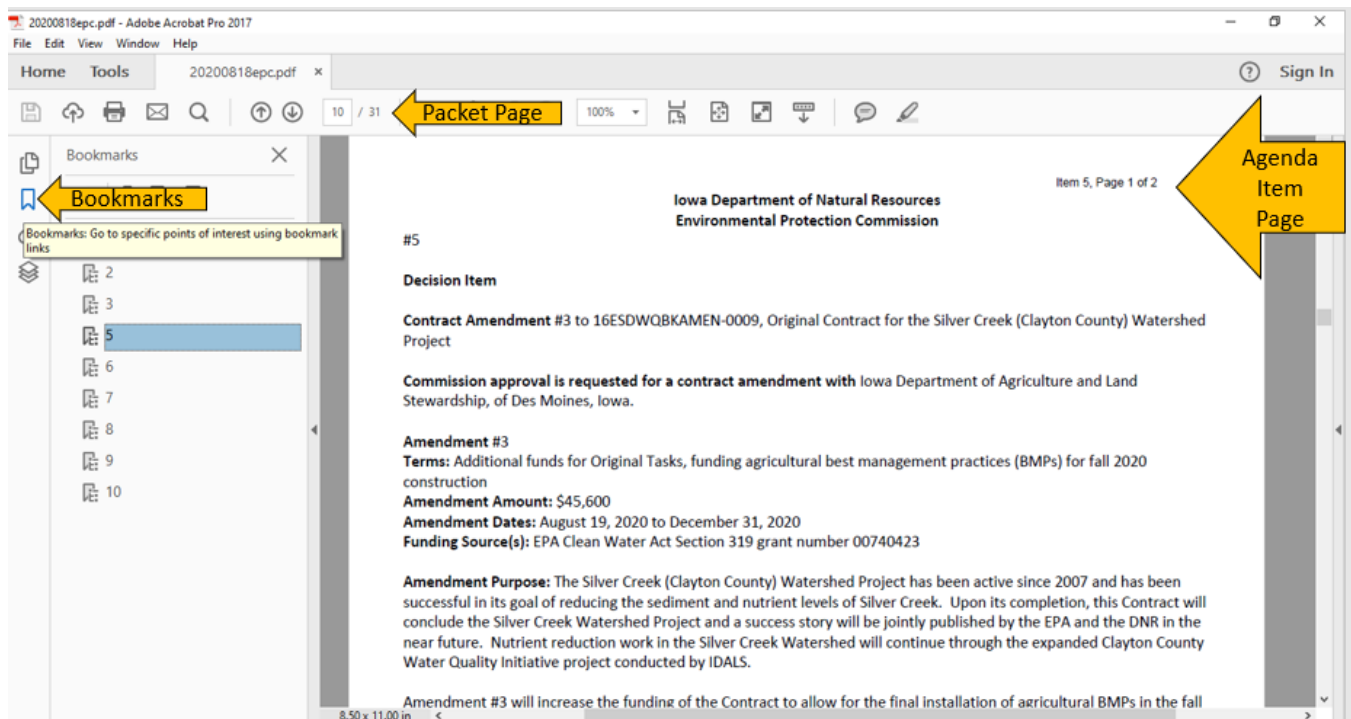
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¹Comments during the public participation period regarding proposed rules or notices of intended action are not included in the official comments for that rule package unless they are submitted as required in the Notice of Intended Action.

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**

March 19, 2024

**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 10:05 am on March 19, 2024 via video/teleconference attendees. General Counsel, Tamara McIntosh, stated for the record that the requirements of Iowa Code section 21.8 were met for the EPC meeting to take place virtually due to the brevity of the agenda.

COMMISSIONERS PRESENT

- Patricia Foley (virtual)
- Harold Hommes (virtual)
- Amy Echard (virtual)
- Rebecca Dostal (virtual)
- Roger Zylstra
- Lisa Gochenour (virtual)
- Kyle Tobiason (virtual)

COMMISSIONERS ABSENT

- Mark Stutsman

APPROVAL OF AGENDA

<i>Motion was made by Patricia Foley to approve the item as presented. Seconded by Lisa Gochenour.</i>
<i>The Chairperson asked for the Commissioners to approve the agenda by saying aye. There were no nay votes.</i>

APPROVED AS PRESENTED

APPROVAL OF MINUTES

<i>Motion was made by Lisa Gochenour to approve the item as presented. Seconded by Roger Zylstra.</i>
<i>The Chairperson asked for the Commissioners to approve the Minutes of the February 20, 2024 meeting by saying aye. There were no nay votes.</i>

APPROVED AS PRESENTED

MONTHLY REPORTS

- Division Administrator Ed Tormey introduced Jessica Montana and Brent Martens with the SW Iowa DNR Environmental Field Office to provide an overview of a recent fertilizer release in Red Oak, Iowa. Brent presented details about the release including cause, quantity of fertilizer that reached the East Nishnabotna River, and the action steps taken to remediate the issue. Brent concluded his remarks by presenting the sampling results of the water downstream.

INFORMATION

DIRECTOR’S REMARKS

- Director Kayla Lyon provided a legislative update to the Commissioners, noting that budget discussions will begin now that we have made it through the second funnel. Director Lyon announced that DNR central office personnel will be moving to the new Park Avenue headquarters in April.

SOLID WASTE ALTERNATIVES PROGRAM (SWAP)-GOODWILL OF CENTRAL IOWA

Tom Anderson requested Commission approval for a contract with Goodwill of Central Iowa for the expansion of reduction, reuse and recycling equipment, funded via the Solid Waste Alternatives Program.

Public Comments – None

Written Comments – None

Motion was made by Patricia Foley to approve the item as presented. Seconded by Lisa Gochenour.

Amy Echard-aye, Roger Zylstra-aye, Patricia Foley-aye, Lisa Gochenour-aye, Rebecca Dostal-aye, Mark Stutsman-absent, Kyle Tobiason-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

SOLID WASTE ALTERNATIVES PROGRAM (SWAP)-COUNCIL BLUFFS HABITAT RESTORE

Tom Anderson requested Commission approval for a contract with Council Bluffs Habitat Restore for the purchase of a cargo van to increase their collection of donated goods and expand their service area, funded via the Solid Waste Alternatives Program.

Public Comments – None

Written Comments – None

Motion was made by Lisa Gochenour to approve the item as presented. Seconded by Roger Zylstra.

Amy Echard-aye, Roger Zylstra-aye, Patricia Foley-aye, Lisa Gochenour-aye, Rebecca Dostal-aye, Mark Stutsman-absent, Kyle Tobiason-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

CONTRACT AMENDMENT WITH REGION XII COUNCIL OF GOVERNMENTS-EMS PROGRAM AUDITING SERVICES

Laurie Rasmus requested Commission approval for a contract amendment with Region XII Council of Governments, Inc. for professional auditing services for the Environmental Management System program through FY 2025.

Public Comments – None

Written Comments – None

Motion was made by Rebecca Dostal to approve the item as presented. Seconded by Kyle Tobiason.

Amy Echard-aye, Roger Zylstra-aye, Patricia Foley-aye, Lisa Gochenour-aye, Rebecca Dostal-aye, Mark Stutsman-absent, Kyle Tobiason-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND-FY 2024 INTENDED USE PLAN FOURTH QUARTER UPDATE

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

Public Comments – None

Written Comments – None

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

Amy Echard-aye, Roger Zylstra-aye, Patricia Foley-aye, Lisa Gochenour-aye, Rebecca Dostal-aye, Mark Stutsman-absent, Kyle Tobiason-aye, Harold Hommes-aye. Motion passes.

APPROVED AS PRESENTED

AIR QUALITY-FISCAL YEAR 2025 DRAFT BUDGET REVIEW

Wendy Walker presented Air Quality's draft budget for FY 2025.

Public Comments – None

Written Comments – None

INFORMATION

GENERAL DISCUSSION

- None

ADJOURN

Chairperson Hommes adjourned the Environmental Protection Commission meeting at 10:45 am on March 19, 2024.

ADJOURNED

**Monthly Waiver Report
March 2024**

Item #	DNR Reviewer	Facility/City	Program	Subject	Decision	Date	Agency
1	Julie Duke	AGP Manning	AQ	Request to operate temporary natural gas boiler in place of existing permitted boilers.	approved	2.21.24	24aqw029
2	Nate Tatar	Keota Veterinary Clinic	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	2.28.24	24aqw030
3	Eric Wiklund	David Campbell	Onsite Wastewater	Mr. Campbell has requested a variance to the requirement for contracting with a "manufacturer's certified technician".	approved	2.26.24	24cpw031
4	Jasmine Bootman	Guttenberg Industries, Inc	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	2.29.24	24aqw032
5	Brandon Polzin	Iowa Engineered Processes	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.1.24	24wcw033
6	Anna Seeger	Pleasant Hill Addition	Water Supply Construction	The waiver requests to use API Specs 10A, Class H cement during grouting for Pleasant Hill Addition Well 1. Standards require AWWA A100 cement which requires grout to meet ASTM C150 Type 1 or Type 2 (similar to API Spec 10, Class A or Class B)	approved	3.4.24	24cpw034
7	Justin Pettit	Mahaska Rural Water System Inc	Water Supply Construction	AWWA Standard C651-14 section 5.1.1.2 requires sets of samples to be collected every 1,200 feet for new water main. The applicant is requesting a waiver from the 1200 ft sampling frequency requirement.	approved	3.1.24	24cpw035
8	Brandon Polzin	Central Iowa Ready Mix - Denison	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.6.24	24aqw036
9	Nate Tatar	Croell Redi-Mix, Inc. - Lansing	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.7.24	24aqw037
10	Nate Tatar	Croell Redi-Mix, Inc. - PP-12-000	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.7.24	24aqw038
11	Brian Hutchins	MidAmerican Energy	AQ	MidAmerican Energy Company – Walter Scott Jr. Energy Center requested a 60 operating day extension to Condition 5Q. of Construction Permit 75-A-357-P9.	approved	3.8.24	24aqw039
12	Danjin Zulic	MidAmerican Energy Company Sioux City	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.8.24	24aqw040
13	Jasmine Bootman	ATEK Metal Technologies, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.8.24	24aqw041
14	Lucas Tenborg	Grain Processing Corporation - Grinnell	AQ	Grain Processing Corporation - Grinnell is requesting a variance to initiate construction on concrete pad and steel beams that will hold new baghouse for new dehuller system (EP-86).	approved	3.11.24	24aqw042
15	Lucas Tenborg	MidAmerican Energy - Louisa	AQ	Facility is requesting a 60 operating day extension to Condition 5Q of Construction Permit 05-A-031-P6	approved	3.11.24	24aqw043
16	John Curtin	Grain Processing Corporation	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement for four gluten filters.	approved	3.14.24	24aqw044
17	Danjin Zulic	Featherlite Manufacturing	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.15.24	24aqw045
18	Danjin Zulic	Featherlite Manufacturing	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.15.24	24aqw046
19	Jaeyoung Park	City of Le Mars	CP (Wastewater)	The City of Le Mars is requesting variance from the Iowa Design Standards Chapter 13-13.4.3 (Pump Openings) for installing a submersible lift station with pumps that do not have at least 4 inches in diameter of pump suction and discharge openings.	approved	3.15.24	24cpw047
20	Julie Duke	AGP Manning	AQ	Request to operate temporary 94.7 MMBtu natural gas boiler to meet the steam demands of the facility	approved	3.15.24	24aqw048
22	Mark Fields	Elite Octane LLC	AQ	Request to turn off humidifier to attempt engineering testing without in operation.	approved	3.20.24	24aqw049
23	Michael Hermsen	SSAB Iowa, Inc - Muscatine	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.19.24	24aqw050
24	Danjin Zulic	University of Northern Iowa	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.22.24	24aqw051
25	Lucas Tenborg	IPL- Ottumwa Generating Station	AQ	IPL – Ottumwa Generating Station wants a variance to bring two temporary engines onsite during a scheduled outage to perform maintenance on the Spray Dryer Absorber tower.	approved	3.26.24	24aqw052
26	Danjin Zulic	Newton Water Pollution Control Plant	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	approved	3.26.24	24aqw053
27	Chad Fields, Kelli Book, Paul P, Alison Manz	Tom Scheffers LLC Truck Wash	Animal Feeding Operation	An existing truck wash is expanding. The owner requested variance from the 400' minimum due to site concerns, well drilling costs, well quality and protection of well.	approved	3.25.24	24cpw054
28	Mark Fields	Continental Cement Company	AQ	Request to use GAR Haul Roads prior to paving.	approved	3.21.24	24aqw055

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

ITEM #5

DECISION

High Hazard Dams Risk Review contract with Houston Engineering Inc., Contract 24ESDLQBGART-0002

Recommendation:

Commission approval is requested for a service contract with Houston Engineering Inc.

Contract Terms:

Amount: Not to exceed \$205,262.88

Dates: April 22, 2024 to December 31, 2024.

Funding Source(s): This contract will be funded through the FEMA National Dam Safety Program State Assistance Grant

Statutory Authority: Iowa Code section 455A.4 and 11 IAC 118

Contract Background: This year's FEMA Dam Safety State Assistance Grant has additional funding available through the Infrastructure Investment and Jobs Act (IIJA) and the DNR proposed to FEMA to complete a high hazard dam portfolio risk assessment that was started under a previous contract in 2023. To date, 39 of the 85 dams have been analyzed, this contract will complete analysis of the remaining 46 dams.

Contract Purpose:

All of Iowa's state regulated high hazard dams receive a visual inspection at least every two years. These visual inspections identify issues with the dam that can be easily observed, however, probable failure modes and populations at risk have not been identified for these structures. Building upon the process started under contract 23ESDLQBGART-0002, the DNR plans to use additional IIJA FEMA Dam Safety State Assistance Grant funds to complete the following evaluation for the remaining high hazard dams:

- Review high hazard dam records to evaluate the original design;
- Conduct a screening level risk assessment;
- Conduct a downstream impacts assessment; and
- Develop mitigation goals and recommended actions for the evaluated dams.

Contractor Selection Process:

An RFP was advertised from January 16 to February 9, 2022. Two responsive proposals were received. Houston Engineering Inc.'s proposal met the requirements and was very similar to the budgeted amount. In addition, Houston Engineering Inc. performed the analysis of the initial 39 dams. Based on responsiveness to the RFP, cost proposal, and reputation; it is recommended to proceed with and contract with Houston Engineering Inc.

Contract History:

The first phase of the work was completed by Houston Engineering Inc. between October 31, 2022 and August 12, 2023 for \$192,379.45.

Abbreviated Scope of Work Task Descriptions:

The DNR is conducting a high hazard dam portfolio risk assessment. The work will include:

- Review of dam records to evaluate original design drawings and calculations. The task will include determining if there are gaps in available information that would make the subsequent tasks difficult.
- Perform a Screening Level Risk Assessment
 - Determine methodology for approximation of the probability and magnitude of dam failure.
 - Identify and Evaluate Potential Failure Modes: Static
 - Identify and Evaluate Potential Failure Modes: Hydrologic
- Perform a Downstream Impacts Assessment

- Identify Population at Risk via existing inundation mapping
- Economic Impacts
- Environmental Impacts
- Develop mitigation goals and recommended actions for the evaluated dams.

Cost proposal:

Houston Engineering Inc. estimates a total of 1,074 hours of work at an average hourly rate of \$191.12.

Task	Total Costs
Task 1: Review of dam records to evaluate original design drawings and calculations.	\$ 19,112.00
Task 2: Screening Level Risk Assessment.	\$68,612.08
Task 3: Downstream Impacts Assessment.	\$ 44,722.08
Task 4: Develop mitigation goals and recommended actions for the evaluated dams.	\$ 72,816.72
Not to Exceed Grand Total	\$205,262.88

Jonathan Garton
 Floodplain and Dam Safety Section Supervisor
 Land Quality Bureau, Environmental Services Division

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

ITEM #6

DECISION

Contract with THE UNIVERSITY OF IOWA**Recommendation:**

Commission approval is requested for a service contract with the State Hygienic Laboratory (SHL) at the University of Iowa.

Contract Terms:

Amount: Not to exceed \$ 26,730.00

Dates: May 1, 2024 through April 1, 2025

Funding Source(s): This contract will be 25% funded through the Environment First Fund for a total of \$6,682.50. The remainder of this contract will be funded through Iowa Code 456.33A Lake Restoration Program (25%), Fisheries Bureau funds (25%), and Wildlife Bureau funds(25%).

Statutory Authority: DNR has the authority to enter into this Contract pursuant to the provisions of Iowa Code 455B.103.

Contract Background: The shallow lakes monitoring program started in 2005-2006 and has provided the DNR, and other project partners, with beneficial pre- and post- shallow lake renovation information. This Contract provides monitoring at 25 lakes. Data collected and analyzed as a part of this Contract will help decision makers better understand the effectiveness of shallow lake restoration and allow managers to make more effective management decisions regarding future planning for restoration of shallow lakes across the state. Data collected through this project will be made available through the DNR's publicly available water quality database (AQuIA).

Monitoring of shallow lakes for a variety of water quality parameters leads to a better understanding of these unique ecosystems and evaluate how individual systems responded to restoration efforts. Overall, restoration efforts have resulted in lakes with better water clarity, changes to the nutrient dynamics in the lake, and changes to the plant and invertebrate communities. These changes are indicative of a clear-water plant-dominated stable state. For example, the Lost Island Lake project resulted in the enhancement of over 1,000 acres of wetland habitat within the Barringer Slough/Blue-wing Marsh complex. Ducks Unlimited engineering staff surveyed and designed a series of water control structures and fish barriers that will allow managers to effectively manage for a productive habitat. Unique fish barrier solutions, from electric to physical and specific to five different sites were needed for this project. To date, average water clarity has improved over 2 feet since the wetland restoration and commercial fishing efforts began.

Contract Purpose: The parties propose to enter into this contract to retain SHL to provide laboratory analytical services of samples collected by DNR staff, in order to help assess the effectiveness of shallow lakes restoration projects.

Contractor Selection Process:

DNR is allowed to contract with the University of Iowa pursuant to Iowa Code section 455B.103(3). The following table shows the current methods and fees required under this contract, as well as the maximum samples able to be analyzed this season.

Parameter	Analytical Method	Test Fee	# of Samples	Total Fee
Total Dissolved Solids	SM 2540 C	\$16.00	125	\$2,000
Total Suspended Solids	USGS I-3765-85	\$16.00	125	\$2,000
	SM 2540 D			

Total Volatile Suspended Solids	EPA 160.4 TVSS	\$16.00	125	\$2,000
Total Phosphorus as P	LAC 10-115-01-1F	\$16.00	125	\$2,000
	EPA 365.1			
	LAC 10-115-01-1E			
	LAC 10-115-01-2b			
	EPA 365.4			
Ammonia Nitrogen as N	LAC 10-107-06 1J	\$16.00	125	\$2,000
	EPA 350.1			
Nitrite + Nitrate as N	LAC 10-107-04 1J	\$16.00	125	\$2,000
	EPA 353.2			
Total Kjeldahl Nitrogen	LAC 10-107-06 2M	\$40.00	125	\$5,000
	EPA 351.2			
Orthophosphate as P	LAC 10-115-01 1A	\$16.00	125	\$2,000
	EPA 365.1			
Chlorophyll a Analysis of Water	EPA 445.0 Rev 1.2	\$46.00	125	\$5,750
	SM 10200 H			
Facilities and Administrative Costs @ 8%				\$1,980.00
Overall Total Cost				\$26,730.00

Contract History:

Fiscal year 2023 Contract: \$ 23,760.00; 20 lakes in this contract

Fiscal year 2022 Contract; \$ 23,760.00; 20 lakes in this contract

Fiscal year 2021 Contract; \$ 27,675.00; 25 lakes in this contract

Fiscal year 2020 Contract; \$ 29,330.10; 25 lakes in this contract

Fiscal year 2019 Contract; \$ 47,250.00; 25 lakes in this contract

Fiscal year 2018 Contract; \$ 26,858.34; 25 lakes in this contract

Fiscal year 2017 Contract; \$ 27,433.35; 25 lakes in this contract

Noah Poppelreiter, Supervisor Water Quality Monitoring and Assessment
Water Quality Bureau Environmental Services Division
April 16, 2024

Iowa Department of Natural Resources
Environmental Protection Commission

ITEM #7

DECISION

Contract with THE UNIVERSITY OF IOWA**Recommendation:**

Commission approval is requested for a service contract with the State Hygienic Laboratory at the University of Iowa.

Contract Terms:

Amount: Not to exceed \$31,598.10

Dates: May 1, 2024, to October 31, 2024

Funding Source(s): Environment First Appropriation

Statutory Authority: Iowa Code section 455B.103(3)

Contract Background: Since 2006, the DNR Beach Monitoring Program has sampled and reported indicator bacteria concentrations at swimming areas throughout the state. Routine monitoring takes place from the week before Memorial Day through Labor Day. The beach monitoring project fits into the mission of the DNR by ensuring high quality recreational opportunities within the state park system and by assessing and reporting on the quality of surface waters in the State.

Contract Purpose: The parties propose to enter into this Contract to retain the Contractor to provide assistance to DNR in the analysis of indicator bacteria samples collected by the DNR and county/city participants as part of the beach monitoring program. Indicator bacteria samples are collected weekly during the monitoring period at up to 41 state park beaches and as many as 34 city and county park beaches.

Contractor Selection Process:

DNR is allowed to contract with the University of Iowa pursuant to Iowa Code section 455B.103(3).

Contract History:

The DNR has entered into contracts with the State Hygienic Laboratory at the University of Iowa on a regular basis since 2014. The purpose of the contracts with University of Iowa is to have the State Hygienic Laboratory provide the DNR with indicator bacteria analysis at state, county, and city-owned beaches. This information is used to inform the public of current beach warning status. Additionally, the DNR intends to utilize the information gathered and analyzed in this Contract in partial fulfillment of sections 303d and 305b of the Clean Water Act including biennial reports on the status of lake water quality, impaired water listing, and total maximum daily load reports. The most recent contracts have been the following:

Contract #1: Timeframe: May 1, 2019, to October 31, 2019; Amount \$ \$25,963.74 ; Amendment: None

Contract #2: Timeframe: May 1, 2020, to October 31, 2020; Amount \$ \$27,839.16; Amendment: None

Contract #3: Timeframe: May 1, 2021, to October 31, 2021; Amount \$ \$84,956.58; Amendment: None

Contract #4: Timeframe: May 1, 2022, to October 31, 2022; Amount \$ \$27,697.68; Amendment: None

Contract #5: Timeframe: May 1, 2023, to October 31, 2023; Amount \$ \$30,748.41; Amendment: None

Daniel Kendall, Environmental Specialist Senior, Water Quality Bureau
Environmental Services Division
April 16, 2024

5.1 Statement of Work. Contractor shall perform the following Tasks. Contractor shall complete its obligations under this Contract by the Task Milestone Dates set out in the following table.

Obligation	Task Milestone Date
<p>Task 1: Analysis of water samples from state park beaches for indicator bacteria Description:</p> <ul style="list-style-type: none"> a) Laboratory analysis shall be completed for <i>Escherichia coli</i> (see Table 4 for a parameter list) on surface water samples collected at up to 41 state park beaches by DNR staff (see Table 1 for a list of these beaches). Samples shall be run at a 1:10 dilution. b) All samples submitted for analysis through this Task shall be coded as IDNR BEACH. c) Laboratory staff shall email the Contract Manager with notification of results greater than 235 CFU/100ml within 2 hours of sample analysis completion. d) SHL shall provide sample containers and chain of custody forms for water samples to be collected by DNR staff during the Contract period. 	<p>Contractor shall conduct sample analysis, including sample set-up, on a weekly basis beginning no later than May 20, 2024, and continuing for 15 weeks.</p> <p>Contractor shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.</p>
<p>Task 2: Analysis of QA/QC samples Description:</p> <ul style="list-style-type: none"> a) Laboratory analysis shall be completed for <i>Escherichia coli</i> (see Table 4 for a parameter list) on all QA/QC samples (field blanks and splits) submitted to SHL by DNR as part of the state beach monitoring program. Samples shall be run at a 1:10 dilution. b) All samples submitted for analysis through this Task shall be coded as IDNR BEACH QAQC. c) SHL shall provide sample containers and chain of custody forms for water samples to be collected by DNR staff during the Contract period. 	<p>Contractor shall conduct sample analysis, including sample set-up, on a weekly basis beginning no later than May 20, 2024, and continuing for 15 weeks.</p> <p>Contractor shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.</p>
<p>Task 3: Assemble and ship bacteria sample kits to city/county beaches Description:</p> <ul style="list-style-type: none"> a) SHL shall ship coolers, cold packs, bottles, and chain of custody forms to all beaches participating in the city/county beach monitoring program (see Table 2 for a list of these beaches). b) SHL shall provide return shipping labels to meet required holding times. 	<p>Contractor shall complete the first shipment of this task no later than May 13, 2024.</p> <p>Contractor shall continue to ship supplies outlined in this task on an as needed basis with the last shipment sent no later than August 26, 2024.</p>
<p>Task 4: Return shipping and analysis of city/county beach bacteria samples Description:</p> <ul style="list-style-type: none"> a) Laboratory analysis shall be completed for <i>Escherichia coli</i> (see Table 5 for a parameter list) on surface water samples collected by DNR, or collected and shipped to SHL from up to 34 city/county park beaches (see Table 2 for a list of these beaches). Return shipping by local city/county staff will allow for samples to arrive at SHL and be analyzed within the 30 hour sample holding time. Samples shall be run at a 1:10 dilution. b) Samples received outside of the 30 hour sample holding time shall not be analyzed. SHL shall email the DNR Contract Manager by end of business on date of sample receipt when city/county beach samples are not analyzed. c) SHL shall email the DNR Contract Manager to notify when city/county beach samples are received on a Thursday or Friday. Samples received on a 	<p>SHL shall complete this Task weekly, beginning week of May 20, 2024, and continuing for 15 weeks.</p> <p>SHL shall make completed results available to DNR via the SHL OpenELIS web portal not later than close of business on Thursday of each week of the monitoring season (May 20 - Sept 2, 2024).</p>

<p>Thursday or Friday and within 30 hour sample holding time shall be analyzed.</p> <p>d) All samples submitted for analysis through this Task shall be coded as CO BEACH.</p>	
<p>Task 5: Special Projects Description:</p> <p>a) SHL shall complete additional analyses from state park or county beaches for indicator bacteria (see Table 4 for a parameter list) as mutually agreed upon in writing by SHL and DNR. Samples shall be run at a 1:10 dilution.</p> <p>b) All samples submitted for analysis through this task shall be coded as IDNR BEACH SPECIAL.</p> <p>c) Laboratory staff shall email the Contract Manager with notification of results greater than 235 CFU/100ml</p>	<p>Contractor shall conduct sample analysis, including sample set-up, on a as needed basis beginning no later than May 20, 2024, and continuing for 15 weeks.</p> <p>Contractor shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.</p>
<p>Task 6: Data Transfer Description: SHL shall make the data generated pursuant to this Contract available to DNR electronically through the State Hygienic Laboratory OpenELIS database web portal. Data shall be available for download by DNR staff in a mutually agreeable format. The available sample information shall include the STORET station identification number (aka AQuIA SiteID), which will be provided by DNR for all station locations. Data shall be retrievable via the web portal by DNR staff.</p> <p>Analytical reports may be retrieved electronically by DNR staff having the appropriate authorization. SHL shall assist DNR staff in obtaining appropriate authorization when requested.</p> <p>When accessing electronic data, the following information is required:</p> <ul style="list-style-type: none"> ● SHL OpenELIS/Telcor Organization ID number: 7002 (IDNR BEACH MONITORING) ● SHL Project Code: (IDNR BEACH; IDNR BEACH QAQC; CO BEACH; IDNR BEACH SPECIAL) 	<p>SHL shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 15 calendar days after the end of each month.</p> <p>If SHL determines that extra time for analysis should be allowed in specific cases, then a written notification shall be made to the DNR Project Manager, stating that analytical results from a sample will be delayed and the reasons for the delay. This notification shall occur as soon as possible but not later than 15 days following receipt of the sample.</p>

7.3 Budget & Submission of Invoices. The budget and submission of invoices for this Contract shall be as follows:

Task*	Total Amount of compensation allotted to Task** (Variable *** Payment)	Task Milestone Date	Invoice Due No Later Than:
<p>Task 1. Analysis of water samples from state park beaches for indicator bacteria (see Table 4 for a parameter list)</p>	<p>No greater than \$11,992.50, at the per sample costs contained in Table 3.</p>	<p>Contractor shall conduct sample analysis including sample set-up, on a weekly basis beginning no later than May 20, 2024, and continuing for 15 weeks.</p> <p>Contractor shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.</p>	<p>Monthly, no later than thirty (30) days following the end of each month.</p>

Task 2: Analysis of QA/QC samples (see Table 4 for a parameter list)	No greater than \$1,560.00, at the per sample costs contained in Table 3.	Contractor shall conduct sample analysis including sample set-up, on a weekly basis beginning no later than May 20, 2024, and continuing for 15 weeks. Contractor shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.	Monthly, no later than thirty (30) days following the end of each month.
Task 3: Assemble and ship bacteria sample kits to city/county beaches	\$ 0	Contractor shall complete the first shipment of this task no later than May 13, 2024. Contractor shall continue to ship supplies outlined in this task on an as needed basis and no later than August 26, 2024.	N/A
Task 4: Return shipping and analysis of city/county beach bacteria samples (see Table 5 for a parameter list)	No greater than \$15,412.50, at the per sample costs contained in Table 3.	SHL shall complete this task weekly, beginning week of May 20, 2024, and continuing for 15 weeks. SHL shall make completed results available to DNR via the SHL OpenELIS web portal not later than close of business on Thursday of each week of the monitoring season (May 20 – September 2, 2024).	Monthly, no later than thirty (30) days following the end of each month.
Task 5: Special Projects (see Table 4 for a parameter list)	No greater than \$292.50, at the per sample costs contained in Table 3.	Contractor shall conduct sample analysis including sample set-up, on an as needed basis beginning no later than May 20, 2024, and continuing for 15 weeks. Contractor shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 2 hours after completion of sample analysis.	Monthly, no later than thirty (30) days following the end of each month.
Task 6: Data Transfer	N/A	SHL shall make completed data and results available to DNR via the SHL OpenELIS web portal not later than 15 calendar days after the end of each month. If SHL determines that extra time for analysis should be allowed in specific cases, then a written notification shall be made to the DNR Project Manager, stating that analytical results from a sample will be delayed and the reasons for the delay. This notification shall occur as soon as possible but not later than 15 days following receipt of the sample.	N/A
Sub-totals	\$29,257.50		
Facilities and Administrative Costs @ 8%	\$2,340.60		
Total	Not to exceed \$31,598.10		

*Payment for completion of Tasks where specific payment is allotted shall be dependent upon the timely completion of corresponding items required by Tasks where no specific payment is allotted.

**Payment also shall conform to any pricing Tables contained in this Contract and referenced in the Budget Table above; or to the relevant SHL Pricing Table. Tables contained in this Contract shall take precedence, in the event of any inconsistency.

Table 1 – List of 41 State Park Beaches (Collected by DNR)

Beach Name	Park	AQuIA SiteID
Backbone Beach	Backbone State Park	21280001
Beed's Lake Beach	Beed's Lake State Park	21350001
Big Creek Beach	Big Creek State Park	21770001
Black Hawk Campground Beach	Black Hawk State Park	21810002
Denison Beach	Black Hawk State Park	21810001
Brushy Creek Beach	Brushy Creek State Recreation Area	21940001
Clear Lake Beach	Clear Lake State Park	21170001
Crandall's Beach	Crandall's Beach	21300005
Emerson Bay Beach	Emerson Bay State Recreation Area	21300004
Geode Beach	Geode State Park	21440001
George Wyth Beach	George Wyth Memorial State Park	21070001
Green Valley Beach	Green Valley State Park	21880001
Gull Point Beach	Gull Point State Park	21300001
Honey Creek Resort Beach	Honey Creek Resort State Park	21040001
Lacey-Keosauqua Beach	Lacey-Keosauqua State Park	21890001
Orleans Beach	Orleans Beach Area	21300007
Lake Ahquabi Beach	Lake Ahquabi State Park	21910001
Lake Anita Beach	Lake Anita State Park	21150001
Lake Darling Beach	Lake Darling State Park	21920001
Lake Keomah Beach	Lake Keomah State Park	21620001
Lake Macbride Beach	Lake Macbride State Park	21520001
Lake Manawa Beach	Lake Manawa State Park	21780001
Lake of Three Fires Beach	Lake of Three Fires St. Park	21870001
Lake Wapello Beach	Lake Wapello State Park	21260001
Lewis and Clark (Blue Lake) Beach	Lewis & Clark State Park	21670001
Marble Beach	Marble Beach State Rec Area	14000380
McIntosh Woods Beach	McIntosh Woods State Park	21170002
Nine Eagles Beach	Nine Eagles State Park	21270001
Pike's Point Beach	Pike's Point State Park	21300002
Lower Pine Lake Beach	Pine Lake State Park	21420001
Pleasant Creek Lake Beach	Pleasant Creek State Recreation Area	21570001
Prairie Rose Beach	Prairie Rose State Park	21830001
Red Haw Beach	Red Haw State Park	21590001
Rock Creek Beach	Rock Creek State Park	21500001
Springbrook Beach	Springbrook State Park	21390001
Triboji Beach	Triboji Beach	21300003
North Twin Lake East Beach	Twin Lakes State Park	21130002
North Twin Lake West Beach	Twin Lakes State Park	21130001
Union Grove Beach	Union Grove State Park	21860001
Viking Lake Beach	Viking Lake State Park	21690001
Bob White Beach	Bob White State Park	21930001

Table 2 – 34 City/County Park Beaches (Collected by City/County Personnel)

<u>Site</u>	<u>Contact</u>	<u>Street Address/P.O.Box</u>	<u>City</u>	<u>Zip Code</u>	<u>AQuiA SiteID</u>
Mormon Trail Beach	Dominic Johnson, Adair County Conservation Board	705 NE 6th Street	Greenfield	50849	21010001
Hannen Lake Park	Ed Hach	5718 20th Ave. Dr.	Vinton	52349	14000158
Rodgers Lake Beach	Ed Hach	5718 20th Ave. Dr.	Vinton	52349	14000236
Don Williams Beach	Zach Stevens	610 H Ave	Ogden	50212	21080001
Sturchler Pit Beach	Buena Vista County Conservation, Greg Johnson	377 440th Street	Peterson	51047	21110002
Gabrielson Park Beach	Buena Vista County Conservation, Greg Johnson	377 440th Street	Peterson	51047	21110001
Malone Park	Kyle Redmond	3942 291st Street	Camanche	52730	21230001
Little River Recreation Area	Decatur CCB – Kimberly Miller	20401 NW Little River Rd	Leon	50144	21270002
Big Hollow Recreation Area	Des Moines County Conservation - Tanner Grimm	13700 Washington Rd	West Burlington	52655	21290001
Willow Lake Recreation Area	Harrison County Conservation Board - Byron Vennink	2725 Easton Trail	Woodbine	51579	21430001
Lake Iowa Park	Phil DeJarnatt	2550 G Ave	Ladora	52251	21480001
Fairfield Waterworks Park	The Fairfield Waterworks – Steve Redinger	700 Waterworks Rd	Fairfield	52556	21510001
Pollmiller Park	Lee County Conservation - Jack Davis	2652 Hwy 61	Montrose	52639	21560001
Deep Lakes Park Beach (Formerly: Muscatine Island)	Muscatine Co Cons Bd - Ryne Brimeyer	3300 Cedar Street/PO Box 109	Muscatine	52761	14000136
Gray's Lake Park	Parks and Recreation – Julie Hempel	1551 E. Martin Luther King Jr. Pkwy	Des Moines	50317	21770003
Big Sioux Recreation Area	Sioux County Conservation - Jessica Van Oort	Attn: Alex Lyon 4051 Cherry Ave	Hawarden	51023	21840001
Sandy Hollow Recreation Area	Sioux County Conservation - Jessica Van Oort	Attn: Zach Weyer 3395 400th St	Sioux Center	51250	14000120
Three Mile Lake beach	Union CCB - Mike Hilger	1577 Creamery Rd	Afton	50830	14000186
Lake Cornelia	Wright CCB – Jeremiah Feltz	1768 O'Brien Ave	Clarion	50525	21990001
Lake Pahoja	Kyle Ciesielski	1831 Buchanan Ave	Inwood	51240	21600001
Treman Park Beach	Calhoun County Conservation - Curtis Vanderheiden	1228 High St	Rockwell City	50579	21130003
Central Park Lake Beach	Jones County Conservation - John Klein	12515 Central Park Road	Center Junction	52212	21530001
Hickory Grove Park	Story County Conservation - Sara Carmichael, Jake Smith	Jake Smith 67464 250th Street	Colo	50056	21850001
Peterson Park Beach	Story County Conservation - Sara Carmichael, Russ Dewall	Russ DeWall 56461 180th St.	Ames	50010	21850002
Browns Lake Beach	Browns Lake - Josh VanVoorst	722 Bigelow Park Road	Salix	51052	21970002
Little Sioux Park Beach	Little Sioux Park - Nathan Silfies	1746 O'Brien Ave	Correctionville	51016	21970001

West Lake Park	Scott County Conservation – J.B. Graham	14910-110th Avenue	Davenport	52804	21820001
Awaysis Park*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	21110004
Bel Air Beach*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	21110005
Casino Beach*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	21110006
Chautauqua Park*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	21110007
Frank Starr Beach*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	14000121
Edson Park*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	21110008
Old Water Plant*	City of Storm Lake - Kim Woltman	433 Vilas Rd	Storm Lake	50588	21110009

*Indicates DNR will drop off to SHL

Table 3 – Breakdown of Costs

Task	Number of Samples	Cost per Sample	Total Cost
Task 1: Analysis of water samples from state park beaches for indicator bacteria	615 (41 state park beaches × 15 weeks)	615 @ \$19.50	\$11,992.50
Task 2: Analysis of QA/QC samples	80 (4 field replicate per week × 15 weeks=60) + (5 equipment blank × 4 (every 4 weeks)=20)	80 @ \$19.50	\$1,560.00
Task 3: Assemble and ship bacteria sample kits to city/county beaches	Outgoing shipments	\$0.00	\$0.00
Task 4: Return shipping and analysis of city/county beach bacteria samples			
Task 4a: Analysis of city/county beach bacteria samples (shipped)	405 (27 beaches × 15 weeks)	405 @ \$19.50	\$7,897.50
	Ground return shipping	405 @ \$13.50	\$5,467.50
Task 4b: Analysis of city/county beach bacteria samples (delivered by DNR)	105 (7 beaches × 15 weeks)	105 @ \$19.50	\$2,047.50
Task 5: Special Projects	Up to 15 samples	15 @ \$19.50	\$292.50
Task 6: Data Transfer		\$0.00	\$0.00
Subtotal			\$29,257.50
Facilities and Administrative Costs @ 8%			\$2,340.60
Contract Total			\$31,598.10

Table 4. Water quality sampling parameters, frequency and fee for Tasks 1, 2, and 5.

SHL Bottle # ¹	Parameter	Analytical Method	Reporting Limit ²	Holding Time	Sample Handling	Test Fee	# of Samples	Total Fee
81	<i>E. coli</i> in water ³	SM 9223 B	<10 MPN/100ml ⁴	CWA 8 hours	Sodium thiosulfate, On ice	\$19.50	706	\$13,845.00
¹ Final type and quantity of bottles will be specified in the bottle order and on the test request form (TRF).								
² DNR requires that the analytical method with the lowest reporting limit be used if the parameter is non-detect.								
³ This parameter will be run at a 1:10 dilution.								
⁴ Result may be reported as greater than the maximum measurable value (e. g. >24,000).								

Table 5. Water quality sampling parameters, frequency and fee for Task 4.

SHL Bottle # ¹	Parameter	Analytical Method	Reporting Limit ²	Holding Time	Sample Handling	Test Fee	# of Samples	Total Fee
81	<i>E. coli</i> in water ³	SM 9223 B	<10 MPN/100ml ⁴	30 hours	Sodium thiosulfate, On ice	\$19.50	510	\$9,945.00
¹ Final type and quantity of bottles will be specified in the bottle order and on the test request form (TRF).								
² DNR requires that the analytical method with the lowest reporting limit be used if the parameter is non-detect.								
³ This parameter will be run at a 1:10 dilution.								
⁴ Result may be reported as greater than the maximum measurable value (e. g. >24,000).								

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item

#8. Chapter 1, “Operation of Environmental Protection Commission”– Final Rule

The Commission is requested to approve the Final rule to rescind and replace Chapter 1, “Operation of Environmental Protection Commission.” This final rule is the result of the Department’s Executive Order 10 rule review.

Basic Intent of Rule: The chapter governs the conduct and business operations of the Commission. The Commission is required by law to adopt rules describing its procedures and operations pursuant to Iowa Code section 17A.3. This chapter reduces and consolidates the Commission’s regulations. This is accomplished by rescinding outdated and redundant provisions.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7205C. Two public hearings were held on January 17 and January 24, 2024.

Changes from NOIA: No one attended the hearings. One written comment was received and suggested that the rule be changed to allow the sale or lease of farm products at a farmer’s market and to reflect the 2021 legislation of adding real estate to the conflict of interest provisions found in Iowa Code chapter 68B. The Department supports these edits.

Consistent with this comment, the following changes have been made to the rule:

- 1: The term “real estate” was added to the title of rule 1.8 and subrules 1.8(1) and 1.8(2);
- 2: The phrase “or to the general public at a farmer’s market, retail store, or road-side stand” was added to paragraph 1.8(2)“b” regarding the sale or lease of farms products;
- 3: Paragraph 1.8(2)“h” was added to address the sale or lease of real estate at a live auction; and
- 4: Paragraph 1.8(2)“i” was added to address the leasing of real estate.

Effective Date of Final Rule: June 19, 2024

Tamara McIntosh, General Counsel
Legal Services Bureau
Meeting Date: April 16, 2024

Attached: Chapter 1 - Final rule

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 1, “Operation of Environmental Protection Commission,” Iowa Administrative Code, and adopts a new Chapter 1 with the same title, Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3 and 455A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code Chapters 17A and 455A.

Purpose and Summary

Chapter 1 governs the conduct, structure, and business operations of the Commission. Consistent with Executive Order 10, Iowa Administrative Bulletin, Vol. XLV, No. 16 (Feb. 8, 2023), p. 2145, and Iowa Code section 17A.7(2)’s five-year rule review, this chapter was edited for length and clarity. Specifically, the new chapter reduces and consolidates the rules. This is accomplished by rescinding outdated provisions and by removing those redundant to statute, including particular provisions around conflict of interest found in Iowa Code Chapter 68B and associated rules. The chapter has also been streamlined as much as possible, stating the conduct, structure, and business operations of the Commission more succinctly and clearly than before.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7205C**.

Two public hearings were held. The first public hearing was on January 17, 2024 at 1:00 pm at the Henry A. Wallace Building, Des Moines, Iowa. The second public hearing was on January 24, 2024 at 9:00 am at the Henry A. Wallace Building, Des Moines, Iowa. No one attended the public hearings.

One written comment was received and suggested that the rule be changed to allow the sale or lease of farm products at a farmer's market and to reflect the 2021 legislation of adding real estate to the conflict of interest provisions found in Iowa Code Chapter 68B. The Commission supports this change. Consistent with this comment, the following changes have been made to the rule:

- 1: The term "real estate" was added to the title of rule 1.8 and subrules 1.8(1) and 1.8(2);
- 2: The phrase "or to the general public at a farmer's market, retail store, or road-side stand" was added to paragraph 1.8(2)"b" regarding the sale or lease of farms products;
- 3: Paragraph 1.8(2)"h" was added to address the sale or lease of real estate at a live auction; and
- 4: Paragraph 1.8(2)"i" was added to address the leasing of real estate.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of

Natural Resources 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 1 and adopt the following **new** chapter in lieu thereof:

TITLE I
GENERAL

CHAPTER 1

OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

567—1.1(17A,455A) Scope. This chapter governs the conduct of business by the environmental protection commission. Rulemaking proceedings and contested case proceedings are governed by other departmental rules.

567—1.2(17A,455A) Meeting location and notification.

1.2(1) Time of meetings. The commission generally meets monthly, but is required to meet at least quarterly. The director, chairperson, or a majority of commissioners may establish meetings.

1.2(2) Notification of meetings. The director will provide public notice of all meeting dates, locations, and agendas.

a. Notice of meetings is given by posting the agenda. The agenda lists the time, date, location, 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.

b. The agenda for each meeting will be posted at the department's main headquarters and on the department's website. 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.

c. 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—1.3(17A,455A) Attendance and participation by the public.

1.3(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.

1.3(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 paragraph 1.2(2) "b." 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. 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—1.4(17A,455A) Quorum and voting requirements.

1.4(1) Quorum. Five or more commissioners present at a meeting constitute a quorum.

1.4(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 1.4(2) "a" or 1.4(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 fewer than six members are present.

567—1.5(17A,455A) Conduct of meeting.

1.5(1) General. Meetings will be conducted in accordance with Robert's Rules of Order unless otherwise provided in these rules. Voting will be by voice or by roll call. Voting will 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 will announce the result of the vote.

1.5(2) Voice votes. All commission members present should respond when a voice vote is taken.

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

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

1.5(3) Provision of information. The chairperson may recognize any agency staff member for the provision of information relative to an agenda item.

567—1.6(17A,455A) Minutes, transcripts, and recordings of meetings.

1.6(1) Audio recordings. The director may record each meeting and shall record each closed session.

1.6(2) Minutes. The director will keep minutes of each meeting. Minutes will be reviewed and approved by the commission.

567—1.7(17A,455A) Officers and duties.

1.7(1) Officers. The officers of the commission are the chairperson, the vice chairperson, and the secretary.

1.7(2) Duties. The chairperson will preside at meetings and will exercise the powers conferred upon the chairperson. The vice chairperson will perform the duties of the chairperson when the chairperson is absent or when directed by the chairperson. The secretary will make recommendations to the commission on approval or revision of the minutes and act as parliamentarian.

1.7(3) Elections. Officers will be elected annually during May.

1.7(4) Succession.

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

567—1.8(17A,455A) Sales and leases of goods, real estate, and services.

1.8(1) Sales and leases. The general provisions for the sales and leases of goods, real estate, and services by commission members is governed by rule 351—6.11(68B).

1.8(2) Consent by rule. The commission concludes that sales or leases of goods, real estate, or services described in this paragraph do not, as a class, constitute the sale or lease of a good, real estate, or service which affects an official's functions. Application and department approval are not required for these sales or leases unless there are unique facts surrounding a particular sale or lease which would cause that sale or lease to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or would otherwise present a conflict of interest.

Sales or leases for which consent is granted by rule are:

a. Nonrecurring sale or lease of goods and services if the official is not engaged for profit in the business of selling or leasing those goods or services.

b. Sale or lease of farm products at market prices to a buyer ordinarily engaged in the business of purchasing farm products or to the general public at a farmer's market, retail store, or road-side stand.

c. Sale or lease of goods to general public at an established retail or consignment shop.

d. Sale or lease 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.

e. Sale or lease of goods at wholesale prices to a buyer ordinarily engaged in the business of purchasing wholesale goods for retail sale.

f. Sale or lease 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.

g. Sale or lease 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.

h. Sale or lease of real estate at a live auction or through an open or closed bidding process. However, if the buyer, seller, lessee, or lessor has a matter for decision before the commission within the next twelve months, the official shall not participate in the discussion and voting on that matter unless consent has been obtained.

i. The leasing of real estate; however, if the lessee or lessor 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.

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

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent*)

***9. Rescind Chapters 3 “Submission of Information and Compliance--Investigations”; 10 “Administrative Penalties”; 12 “Environmental Self-Audits”; 17 “Compliance and Enforcement” Adopt Chapter 10 “Complaints, Audits, Enforcement Options and Administrative Penalties” – Adopted and Final Rule**

The Commission is requested to approve the Adopted and Final rule to rescind Chapters 3 “Submission of Information and Compliance--Investigations”; 10 “Administrative Penalties”; 12 “Environmental Self-Audits”; 17 “Compliance and Enforcement” and replace with Chapter 10 “Complaints, Audits, Enforcement Options and Administrative Penalties.” This final rule is the result of the Department’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 10 consolidates regulations related to environmental complaints, compliance, and enforcement. These were formerly scattered across four administrative chapters (567-3, 567-10, 567-12, and 567-17). They will now be housed in Chapter 10.

In more detail, Chapter 10: 1) provides guidelines for submitting and responding to complaints; 2) provides the procedures for self-disclosures of environmental violations, which may result in immunity from administrative penalties; 3) identifies the Department of Natural Resources’ compliance and enforcement framework; and 4) provides the policies and procedures for the assessment of administrative penalties.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC #7206C. Two public hearings were held on January 16, 2024 and January 25, 2024.

Changes from NOIA: No one attended the hearings and no comments were received. The Final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024.

Tamara McIntosh
General Counsel

Meeting Date: April 16, 2024

Attached: Chapter 10 – Adopted and Final

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 3, “Submission of Information and Complaints—Investigations,” and Chapter 10, “Administrative Penalties”; and adopts a new Chapter 10, “Complaints, Audits, Enforcement Options and Administrative Penalties”; and rescinds Chapter 12, “Environmental Self-Audits,” and Chapter 17, “Compliance and Enforcement Procedures,” Iowa Administrative Code

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 17A.3, 455B.105(3), 455B.109 and 455K.12.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

Chapters 3, 12, and 17 governed environmental inspections, compliance, self-audits, and enforcement. Chapter 10 contained rules for assessing administrative penalties in enforcement actions. All of the chapters are consolidated into new Chapter 10.

In more detail, the new Chapter 10: (1) provides guidelines for submitting and responding to complaints; (2) provides the procedures for self-disclosures of environmental violations, which may result in immunity from administrative penalties; (3) identifies the Department of Natural Resources’ (Department’s) compliance and enforcement framework; and (4) provides the policies and procedures for the assessment of administrative penalties.

Consistent with Executive Order 10 and the five-year review of rules in Iowa Code section 17A.7(2), all of these chapters are edited for length and clarity. Additionally, several provisions in the merged chapters are repetitive to underlying statute and have been removed.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7206C**.

Two public hearings were held in January 2024. The first public hearing was held on January 16, 2024, at 1:30 pm - 3:00 pm at the Wallace State Office Building in Des Moines, Iowa. The second public hearing was held on January 25, 2024, at 10:00 am - 11:30 am, through a virtual meeting via Zoom. There were no attendees at either of the public hearings. No public comments were received.

There have been no changes to the Notice of Intended Action.

Adoption of Rulemaking

This rulemaking was adopted by the Environmental Protection Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **567—Chapter 3**.

ITEM 2. Rescind 567—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
COMPLAINTS, AUDITS, ENFORCEMENT OPTIONS
AND ADMINISTRATIVE PENALTIES

DIVISION I
COMPLAINTS AND INVESTIGATIONS

567—10.1(455B) Complaints and investigations. The process to submit a complaint and to investigate a complaint is as follows:

10.1(1) *Submission requirements and investigations.* Complaints concerning alleged violations of departmental statutes or rules should be submitted to the appropriate department office, and the nature of the complaint must be summarized in a concise manner. Complaints will be investigated by the department if it appears that an investigation is needed to ensure compliance with applicable departmental statutes or rules.

10.1(2) *Known source of complaints.* In the case of a known complainant, the appropriate department office shall notify the complainant of the investigation results or of its decision not to investigate the complaint.

10.1(3) *Anonymous complaints.* Complaints may be submitted by anonymous sources and will be handled as discretionary investigations. In these cases, the department will not be able to notify the complainants of the results of the investigations.

This rule is intended to implement Iowa Code sections 455B.105(3) and 17A.3(1).

567—10.2 to 10.9 Reserved.

DIVISION II
ENVIRONMENTAL AUDITS

567—10.10(455K) Environmental audits. This part sets forth rules governing voluntary disclosure of environmental noncompliance discovered as a result of an environmental self-audit conducted by or on behalf of a facility owner or operator under the provisions of Iowa Code chapter 455K.

567—10.11(455K) Notice of audit.

10.11(1) If a notice of audit is provided to the department, it must be submitted in writing and include the following information:

- a.* The name and location (address and city) of the facility to be audited;
- b.* The description of the facility or portion of the facility, activity, operation or management system to be audited, including applicable department permits or registration numbers;
- c.* The anticipated audit initiation date (day, month, and year);
- d.* The general scope of audit, with sufficient detail to determine if discovered violations would be included. If the scope of the audit changes before it is completed, an amended notice shall be submitted promptly;
- e.* The names of the persons conducting the audit; and
- f.* The anticipated audit completion date, not to exceed six calendar months.

10.11(2) The department will provide written acknowledgment of receipt for notices of audit, which will include an assigned identification number.

567—10.12(455K) Request for extension. If notice of audit is given to the department, the audit must be completed within a reasonable time, not to exceed six calendar months from the date the notice of audit is received by the department unless a written request for extension has been filed with and granted by the department.

10.12(1) A request for extension must be filed in writing with the department at least 30 calendar days prior to expiration of the initial six-month period and provide sufficient information for the department to determine whether reasonable grounds exist to grant an extension.

10.12(2) The department will provide written determination either granting or denying a request for extension within 15 calendar days of receipt.

567—10.13(455K) Disclosure of violation. An owner or operator wishing to take advantage of the immunity provisions of Iowa Code chapter 455K must make a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through an environmental audit.

10.13(1) A disclosure of violation must be sent to the department in writing and include the following information:

- a.* Reference to the date of the relevant notice of audit and assigned identification number;
- b.* Time of initiation and completion of the audit, if applicable;
- c.* The names of the person or persons conducting the audit;
- d.* Affirmative assertion that a violation has been discovered;
- e.* Description of the violation and reason for believing a violation exists;
- f.* Date of discovery of the violation and interim measures, if applicable, to abate the violation;
- g.* Duration of the violation if it can be determined; and
- h.* The status and schedule of proposed final corrective measures, if applicable.

10.13(2) The department will provide written acknowledgement of receipt of a disclosure of violation, which will include either concurrence or rejection of the proposed final corrective measures and schedule.

567—10.14(455K) Public information. A notice of audit, request for extension, and disclosure of violation documents are considered public information. Copies of the environmental audit report should not be submitted to the department.

These rules are intended to implement Iowa Code chapter 455K.

567—10.15 to 10.19 Reserved.

DIVISION III
ENFORCEMENT OPTIONS

567—10.20(455B) Enforcement options. In addition to administrative and civil actions for monetary penalty, the following enforcement options are available to the department to obtain information and seek compliance.

10.20(1) *Informal meeting.* Department staff may attempt to resolve a potential violation or obtain additional information with an informal meeting. The discussion will usually focus on corrective actions to be taken, and in most instances, only department staff and the facility representative will be present.

10.20(2) *Letter of inquiry (LOI).* The purpose of an LOI is to allow the regulated entity the opportunity to provide information that would be helpful for a determination of whether a violation has occurred.

10.20(3) *Letter of noncompliance (LNC).* An LNC may be used when no environmental harm or threat to human health or safety has occurred or is imminent, the regulated entity is not a repeat offender, the corrective action is not deemed an emergency, or the violation is considered insignificant. The letter is intended to provide the regulated entity with an opportunity to correct the identified deficiencies prior to further enforcement activity. In an LNC, the department may suggest remedial measures, set a date for returning to compliance, or request a response from the regulated entity within a specific time period as to how the identified problems will be resolved.

10.20(4) *Notice of violation (NOV).* When the other compliance and enforcement activities described in this division are not appropriate for a violation, or when the regulated entity has not returned to compliance, the department may issue an NOV. An NOV may be used when environmental harm or a threat to human health or safety has occurred or is imminent, a regulated entity is a repeat offender, a corrective action is deemed an emergency, or a violation is considered significant. An NOV identifies the nature of the violation and any required corrective action.

567—10.21(455B) Options to respond. Upon receiving an LOI, LNC, or NOV, a regulated entity has the option to respond to the department, even if a response is not specifically requested. In responding to an LNC or NOV, the regulated entity should clearly outline any disagreements with the LNC or NOV, provide any pertinent additional information, describe any current or planned corrective action, and provide a schedule for returning to compliance. The department will review written information submitted in response to the compliance and enforcement procedures described in this part and will include this information in the file of record. Nothing in this chapter adds to or takes away from the appeal rights provided in Iowa Code chapter 17A.

567—10.22(455B) Department discretion. At the department's sole discretion, the department may follow the compliance and enforcement procedures described in this part, commence with an LNC or NOV, or forego these options and commence with an administrative action, or the department may request referral to the attorney general.

These rules are intended to implement Iowa Code sections 455B.105(3) and 17A.3(1).

567—10.23 to 10.29 Reserved.

DIVISION IV ADMINISTRATIVE PENALTIES

567—10.30(455B) Criteria for screening and assessing administrative penalties. All formal enforcement actions are processed through the environmental protection division administrator of the department. The administrator shall screen each case to determine the most equitable and efficient means of redressing and abating a violation. In screening a violation to determine which cases may be appropriate for administrative assessment of penalties or for purposes of assessing administrative penalties, the department will consider among other relevant factors the following:

10.30(1) *Economic benefit.* Costs saved or likely to be saved by a violator's noncompliance. Where a violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties to offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.

10.30(2) *Gravity of the violation.* Factors include but are not limited to:

- a. The actual or threatened harm to the environment or public health and safety.
- b. Involvement of toxic or hazardous substances or potential long-term effects of the violation.

- c. The degree to which ambient or source-specific standards are exceeded, where pertinent.
- d. Federal program priorities, size of facility, or other pertinent factors.
- e. Whether the violation is repeated or whether it violates an administrative or court order.
- f. Whether the type of violation threatens the integrity of a regulatory program.
- g. Expenses or efforts by the government in detecting, documenting, or responding to a violation.

10.30(3) Culpability. Factors include but are not limited to:

- a. The degree of intent or negligence. The standard of care required by the laws of the state of Iowa will be considered.
- b. Whether the case involves false reporting of required information, or tampering with monitoring devices.
- c. Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

10.30(4) Deterrent. Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or by others similarly situated.

10.30(5) Other relevant factors. The department will consider other relevant factors which arise from the circumstances of each case.

10.30(6) Department discretion. This screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action, nor does this procedure require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

567—10.31(455B) Assessment of administrative penalties. Except for operator discipline, administrative penalties shall be assessed through issuance of an administrative order or an administrative consent order of the director which recites the facts and the legal requirements which have been violated, and a general rationale for the prescribed penalty.

10.31(1) Administrative order or administrative consent order. An administrative order or administrative consent order may include cumulative penalties up to \$10,000 for multiple violations and may be combined with any other order authorized by statute for mandatory or prohibitory injunctive conditions. The administrative order is subject to contested case and appellate review. Operator discipline is governed by 567—Chapter 81.

10.31(2) Determination of amount. The amount of penalty for each day of violation shall be determined from evaluation of the factors outlined in rule 567—10.30(455B). The actual or reasonably estimated economic benefit shall always be assessed.

These rules are intended to implement Iowa Code section 455B.109.

ITEM 3. Rescind and reserve **567—Chapter 12.**

ITEM 4. Rescind and reserve **567—Chapter 17.**

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***10. Chapter 9, “Delegation of Construction Permitting Authority” – Final Rule**

The Commission is requested to approve the Final rule to rescind Chapter 9, “Delegation of Construction Permitting Authority.” This final rule is the result of the Water Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: The intended benefit of Chapter 9 was to provide a framework for the water supply and wastewater extension delegated authority program in Iowa Code section 455B.183. However, the chapter is unnecessary for the implementation of the program due to the self-enacting nature of the Iowa Code provisions and the existence of statewide engineering design standards for drinking water and wastewater. Importantly, the delegated authority program of Iowa Code section 455.183 will remain in full force and effect through the direct implementation of the statute. The Department will provide guidance to local permitting authorities to help the authorities’ proper implementation of the Iowa Code.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on October 17, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7207C. One public hearing was held on January 18, 2024.

Changes from NOIA: No one attended the hearing and no public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Lori McDaniel, Water Quality Bureau Chief
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 9 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission hereby rescinds Chapter 9, “Delegation of Construction Permitting Authority,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455B.105 and 455B.173.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking rescinds Chapter 9. Importantly, the delegated authority program of Iowa Code section 455.183 will remain in full force and effect through the direct implementation of the statute.

The intended benefit of the chapter was to provide a framework for the water supply and wastewater extension delegated authority program in Iowa Code section 455B.183. However, the chapter is unnecessary for the implementation of the program due to the self-enacting nature of the Iowa Code provisions and the existence of statewide engineering design standards for drinking water and wastewater. The Department of Natural Resources will provide guidance to local permitting authorities to help the authorities properly implement the Iowa Code.

Public Comment and Changes to Rulemaking

Notice of Intended Action (NOIA) for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7207C**.

A public hearing was held on January 18, 2024, at 11 AM via video/conference call. One person attended the public hearing. No public comments were received. The final rule is identical to the NOIA.

Adoption of Rulemaking

This rulemaking was adopted by the Environmental Protection Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 29, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve 567—Chapter 9.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***11. Chapter 11, “Tax Certification of Pollution Control or Recycling Property”– Final Rule**

The Commission is requested to approve the Final rule to rescind and replace Chapter 11, “Tax Certification of Pollution Control or Recycling Property.” This Final rule is the result of the Land Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 11 clarifies the process and eligibility criteria for properties to obtain a pollution control or recycling certification from the Department. This certification allows the owner to apply for a property tax exemption through their local county assessor’s office.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7222C. Two public hearings were held on January 16 and 17, 2024.

Changes from NOIA: No one attended the hearings and no comments were received. The Final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Amie Davidson, Land Quality Bureau, Bureau Chief
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 11 - Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 11, “Tax Certification of Pollution Control or Recycling Property,” Iowa Administrative Code and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 427.1(19)“d.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 427.1(19).

Purpose and Summary

Chapter 11 clarifies the process and eligibility criteria for properties to obtain a pollution control or recycling certification from the Department of Natural Resources (Department). This certification allows the owner to apply for a property tax exemption through their local county assessor’s office.

Consistent with Executive Order 10 (January 10, 2023) and the five-year review of rules in Iowa Code section 17A.7(2), Chapter 11 was edited for length and clarity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7222C**.

Public hearings were held on January 16, 2024, at 1:00 p.m. and January 17, 2024, at 11:00 a.m. via video/conference call. No one attended the hearings. No public comments were received.

The Final rule is identical to the Notice of Intended Action.

Adoption of Rulemaking

This rulemaking was adopted by the Environmental Protection Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 567—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

Item 1. Rescind 567—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11

TAX CERTIFICATION OF POLLUTION CONTROL OR RECYCLING PROPERTY

567—11.1(427) Form. All requests for the department to certify air or water pollution control recycling property pursuant to Iowa Code section 427.1(19) shall be submitted on a form prescribed by the department. Through these forms, the department may request any information necessary to make a determination under 567—11.5(427).

567—11.2(427) Time of submission. A request may be submitted at any time. Taxpayers are reminded that failure to dispatch a request sufficiently in advance of the February 1 deadline for filing with the assessing authority may cause the applicant to fail to qualify for the first possible annual exemption.

567—11.3(427) Notice. The department shall notify the taxpayer of the decision within ten days of receipt of a complete request. The notice shall include either the certificate if the decision is to certify the property as requested, or a concise statement of reasons for denial if the decision is to deny the request or to certify a lesser portion of the property than requested. The determination of the department to deny or grant only a portion of the request may be appealed to the commission pursuant to 567—Chapter 7.

567—11.4(427) Issuance. Upon the decision of the department or the commission on appeal to certify all or any portion of the property for which a request has been made, two copies of the certificate will be signed by the director or the director's designee and mailed to the taxpayer. The certificate shall describe the property certified and state the date on which the department certified the property.

567—11.5(427) Criteria for determining eligibility.

11.5(1) General. Property that has been installed and is used primarily to meet an effluent standard, a water quality standard, or an emission standard or to control hydrocarbons, fugitive dust, odors or other air contaminants in a reasonably adequate manner shall be considered to be used primarily to control or abate pollution of the water or air of the state. Property that has been installed to meet a standard more stringent than an emission or water quality standard shall be considered to be used primarily to enhance the quality of the water or air of the state. Personal property or improvements to real property as defined by Iowa Code section 427A.1 or any portion of the property used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, waste paperboard, waste glass, or waste wood into new raw materials or products composed primarily of recycled material shall be considered recycling property. Each request will be considered in the context of its particular circumstances.

In the event that such property also serves other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation.

11.5(2) Denial. Property may be denied certification if it is not being operated in compliance with the rules of the department so as to effectively control or abate pollution or enhance the quality of the air or water

of the state, or recycle property into new raw materials or products composed primarily of recycled material. Property that was constructed or installed without permits required from the department will be denied certification unless and until such time as the property has received after-the-fact approval from the department.

These rules are intended to implement Iowa Code section 427.1(19).

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***12. Chapter 14, “Environmental Covenants” – Final Rule**

The Commission is requested to approve the Final rule to rescind Chapter 14, “Environmental Covenants.” This final rule is the result of the Land Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: This rulemaking rescinds Chapter 14. The Uniform Environmental Covenants Act found in Iowa Code chapter 455I is self-enacting. Therefore, rules are not necessary, nor expressly authorized. However, rescission of this chapter has no impact on the Department of Natural Resources’ ability to enter into effective environmental covenants with interested landowners.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on October 17, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7208C. One public hearing was held on January 17, 2024.

Changes from NOIA: No one attended the hearing and no public comments were received. The Final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Amie, Davidson, Land Quality Bureau, Bureau Chief
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 14 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 14, “Environmental Covenants,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking rescinds and reserves Chapter 14. The Uniform Environmental Covenants Act found in Iowa Code chapter 455I is self-enacting. Therefore, rules are neither necessary nor expressly authorized. Rescission of this chapter has no impact on the Department of Natural Resources’ ability to enter into effective environmental covenants with interested landowners.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7208C**.

A public hearing was held on January 17, 2024, at 11 am via video/conference call. No one attended the hearing. No public comments were received.

The Final rule is identical to Notice of Intended Action.

Adoption of Rulemaking

This rulemaking was adopted by the Environmental Protection Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **567—Chapter 14**.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***13. Chapter 15, “Cross-Media Electronic Reporting” – Final Rule**

The Commission is requested to approve the Final rule to rescind and replace Chapter 15, “Cross-Media Electronic Reporting.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 15 includes an updated and streamlined rule for implementation of the federal Cross-Media Electronic Reporting Rule (CROMERR). The CROMERR requirements allow submittal of electronic reports and other documents to the Department’s environmental programs.

Stakeholders have supported the Department’s development and implementation of CROMERR-compliant electronic document receiving systems. Electronic submittal of reports and other documents reduces or eliminates document errors and missing information, which shortens document review and processing times for staff and speeds up approvals for regulated facilities.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7225C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Jim McGraw, Supervisor
Air Quality Bureau, Program Development & Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 15 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 15, “Cross-Media Electronic Reporting,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 554D and section 455B.105.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 15. The new Chapter 15 includes an updated and streamlined rule for the implementation of the federal Cross-Media Electronic Reporting Rule (CROMERR).

The CROMERR requirements are established in 40 Code of Federal Regulations (CFR) Part 3. The requirements apply to persons and signatories who submit electronic reports or other documents to the Department of Natural Resources to satisfy requirements of 40 CFR for authorized environmental programs.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7225C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearings. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15

CROSS-MEDIA ELECTRONIC REPORTING

567—15.1(455B,554D) Purpose. This rule implements 40 CFR Part 3, the federal cross-media electronic reporting rule (CROMERR), as amended through November 17, 2009.

15.1(1) Applicability. The provisions of 40 CFR Sections 3.1 and 3.2 are adopted by reference.

15.1(2) Definitions.

a. For the purpose of this chapter, the following definitions in 40 CFR Section 3.3 are adopted by reference: “Authorized program,” “Copy of record,” “Electronic document,” “Electronic document receiving system,” “Electronic signature,” “Electronic signature agreement,” “Electronic signature device,” “Federal program,” “Handwritten signature,” and “Valid electronic signature.”

b. The following definition applies to this chapter:

“*Authorized signatory*” means an individual authorized to sign documents under one or more authorized programs, in accordance with the specific requirements of each authorized program, and who signs a document submitted to one of the department’s electronic document receiving systems pursuant to an electronic signature agreement.

15.1(3) Use of electronic document receiving systems.

a. *Website announcement.* When the director has announced on the department’s website that electronic documents are being accepted in lieu of paper to satisfy requirements under one or more authorized programs, individuals who submit such electronic documents must use the CROMERR-compliant electronic document receiving system or systems as specified by the department.

b. *Submittals requiring signature.* Any electronic document submitted to the department must bear a valid electronic signature of an authorized signatory, if that signatory would be required under an authorized program to sign the paper document for which the electronic document substitutes.

c. *Submittals not requiring signature.* If no signature is required under an authorized program, individuals may submit electronic documents in lieu of paper to satisfy requirements of such programs through one or more of the department’s CROMERR-compliant electronic document receiving systems without an electronic signature or an electronic signature agreement.

15.1(4) Electronic signature agreement (ESA).

a. *Agreement to be executed.* In order to sign and submit electronic documents in one of the departments’ CROMERR-compliant electronic document receiving systems, a signatory must execute an ESA specific to that

electronic document receiving system.

b. Form and content of agreement. All ESAs shall include the information and follow the format defined by the department in the specific CROMERR-compliant electronic document receiving system.

c. Verification. The identity and signature authority of each individual submitting an ESA shall be verified by the state of Iowa or by a third-party signature verification service. After verification, the department shall notify an individual electronically that electronic documents may be signed and submitted in a specific CROMERR-compliant electronic document receiving system.

d. Certification. Each document submission authorized by an electronic signature shall contain the following statement: “I certify under penalty of law that I have had the opportunity to review, in human-readable format, the content of the electronic document to which I here certify and attest, and I further certify under penalty of law that, based on the information and belief formed after reasonable inquiry, the statements and information contained in this submission are true, accurate, and complete. I understand that making any false statement, representation, or certification of this submission may result in criminal penalties.”

15.1(5) *Valid electronic signature.*

a. Signatory. An authorized signatory may not allow another individual to use the electronic signature device unique to the authorized signatory’s electronic signature.

b. Unique signature device. When the electronic signature device is used to create an individual’s electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The signatory shall:

(1) Protect the electronic signature device from compromise; and

(2) Report to the department, within one business day of discovery, any evidence that the security of the device or the signatory’s electronic signature has been compromised.

15.1(6) *Effect of electronic signature and enforcement.* The provisions of 40 CFR Section 3.4 are adopted by reference.

This chapter is intended to implement Iowa Code section 455B.105 and chapter 554D.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (*indicates proposed consent item)

***14. Chapter 16, “Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities” – Final Rule**

The Commission is requested to approve the Final rule to rescind Chapter 16, “Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities.” This rulemaking is the result of the Department’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 16 is unnecessary. It is duplicative of underlying state law (Iowa Code section 272D.8(2)) and of other related rules promulgated by the Department of Natural Resources in 561 Iowa Administrative Code Chapter 15.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on October 17, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7221C. One public hearing was held on January 16, 2024.

Changes from NOIA: No one attended the hearing and no comments were received. The Final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Tamara McIntosh, General Counsel
Legal Services Bureau
Meeting Date: April 16, 2024

Attached: Chapter 16 – Final rule

**ENVIRONMENTAL PROTECTION COMMISSION[567]
Adopted and Filed**

The Environmental Protection Commission (Commission) hereby rescinds Chapter 16, “Revocation, Suspension, and Nonrenewal of License for Failure to Pay State Liabilities,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 455A.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission rescinds and reserves Chapter 16. This chapter is unnecessary. It is duplicative of underlying state law (Iowa Code section 272D.8(2)) and of other related rules promulgated by the Department of Natural Resources (Department) (561—Chapter 15).

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7221C**.

A public hearing was held on January 16, 2024, at 1 to 2 p.m. at the Wallace State Office Building. No one attended the public hearing. No public comments were received. The Final rule is identical to the Notice of Intended Action.

Adoption of Rulemaking

This rulemaking was adopted by the Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve 567—Chapter 16.

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

Decision Item (**indicates proposed consent item*)

- *15. Chapter 20, “Scope of Title—Definitions,” Chapter 25, “Measurement of Emissions,” Chapter 26, “Prevention of Air Pollution Emergency Episodes,” Chapter 28, “Ambient Air Quality Standards,” Chapter 29, “Qualification in Visual Determination of the Opacity of Emissions,” Chapter 32, “Animal Feeding Operations Field Study,” Chapter 34, “Provisions for Air Quality Emissions Trading Programs,” and Chapter 35, “Air Emissions Assistance Program” –Final Rules**

The Commission is requested to approve the Final rules to rescind Chapters 20, 25, 26, 28, 29, 32, 34, and 35. This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule Actions:

- **Chapter 20:** This chapter included the definitions for the air quality chapters in the IAC. The Department has determined that the air quality definitions are more appropriately placed in the subject matter chapters. Further, several definitions are obsolete and have been rescinded entirely. The remaining and updated definitions have been moved to new Chapters 21, 22, and 23.
- **Chapter 25:** This chapter specified the required methods for measuring emissions, which includes stack testing and continuous emissions monitoring. The streamlined provisions of Chapter 25 have been moved to new Chapter 21, since the test methods are related to determining if excess emissions have occurred.
- **Chapter 26:** This chapter included the required actions for emergency episodes of excess air pollution. The streamlined provisions of these rules have been moved to new Chapter 21, since the provisions are related to excess emissions.
- **Chapter 28.** This chapter adopted the National Ambient Air Quality Standards (NAAQS) by reference. These provisions have been moved to new Chapter 22, since attainment of the NAAQs is a requirement for the Department to issue air construction permits.
- **Chapter 29:** This chapter specified the federal test method for determining visible emissions (opacity) and the requirement to become certified in this test method. These provisions have been moved to new Chapter 21 because they are related to measurement of emissions.
- **Chapter 32:** This chapter specified the requirements that the Department perform a field study to determine airborne levels of ammonia, hydrogen sulfide, and odor near animal feeding operations. These provisions are no longer needed because the required study was completed in 2005 and the Department issued its final report in January 2006. The study report and additional documents will continue to be available on the Department’s website.
- **Chapter 34:** This chapter included the requirements for various emissions trading programs. These rules are no longer needed because the federal trading programs are no longer active or are being administered by the U.S. Environmental Protection Agency.
- **Chapter 35:** This chapter included the requirements for administering federal grants related to air quality, specifically for federal grants related to retrofitting or replacing diesel buses. These programs have either been concluded or are no longer being administered by the Department.

NOIAs: The Notices of Intended Action (NOIAs) to rescind these chapters were approved by the Commission on October 17, 2023. The NOIAs for Chapters 20, 25, 26, 28, 29, 32, 34, and 35 were

published in the Iowa Administrative Bulletin on December 27, 2023, as ARCs 7210C, 7218C, 7224C, 7220C, 7216C, 7227C, 7212C, and 7217C, respectively. A public hearing was held on January 29, 2024.

Changes from NOIA: Six people attended the hearing. No public comments were received. The final rules to rescind these chapters are identical to the NOIAs.

Effective Date of Final Rule: June 19, 2024

Christine Paulson, Environment Specialist Senior
Air Quality Bureau, Program Development and Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapters 20, 25, 26, 28, 29, 32, 34, and 35 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 20, “Scope of Title—Definitions,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 20. This chapter set forth the scope of title and the definitions applicable to air quality rules in Chapters 20 through 35. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that the scope of title is no longer needed because the information is generally covered in Chapters 1 through 19. Further, the Department concluded that the relevant definitions would be more appropriately placed in the subject matter chapters, specifically new Chapters 21, 22, and 23. Adopted and Filed rulemakings to rescind and adopt new Chapters 21, 22, and 23 that include the appropriate definitions are filed concurrently with this rulemaking.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7210C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 20**.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 25. This chapter established the state and federal standards for testing and monitoring air emissions. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that reference to rules for the measurement of emissions would be more appropriately placed in another subject matter chapter, specifically new Chapter 21. An Adopted and Filed rulemaking to rescind and adopt a new Chapter 21 that includes updated provisions from Chapter 25 is filed concurrently with this rulemaking.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7218C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 25.**

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 26, “Prevention of Air Pollution Emergency Episodes,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 26. This chapter established Iowa’s plans and procedures to prevent air pollution emergencies, as required by the U.S. Clean Air Act and codified in 40 Code of Federal Regulations Part 51, Appendix L. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that rules for the prevention of air pollution emergency episodes would be more appropriately placed in another subject matter chapter, specifically new Chapter 21. An Adopted and Filed rulemaking to rescind and adopt a new Chapter 21 that includes updated provisions from Chapter 26 is filed concurrently with this rulemaking.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7224C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 26**.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 28, “Ambient Air Quality Standards,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 28. This chapter established that the State of Iowa ambient air quality standards shall be the National Ambient Air Quality Standards (NAAQS). The NAAQS consist of both primary and secondary standards for six criteria air pollutants, as published in 40 Code of Federal Regulations Part 50. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that reference to the adoption of the NAAQS would be more appropriately placed in the subject matter chapter, specifically new Chapter 22. An Adopted and Filed rulemaking to rescind and adopt a new Chapter 22 that includes updated provisions from Chapter 28 is filed concurrently with this rulemaking.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7220C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 28**.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 29, “Qualification in Visual Determination of the Opacity of Emissions,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 29. This chapter established the federal reference method for the determination of the opacity of emissions (visible emissions) and the requirements for qualified observers. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that rules for the qualification in visual determination of the opacity of emissions would be more appropriately placed in another subject matter chapter, specifically new Chapter 21. An Adopted and Filed rulemaking to rescind and adopt a new Chapter 21 that includes updated provisions from Chapter 29 is filed concurrently with this rulemaking.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7216C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 29**.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 32, “Animal Feeding Operations Field Study,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 32. This chapter specified how the Department of Natural Resources (Department) would conduct a field study to measure the levels of hydrogen sulfide, ammonia and odor near animal feeding operations. The required field study took place between 2003-2005, and the final report was issued in January 2006. The final report and associated study documents are available on the Department’s website at iowadnr.gov/Environmental-Protection/Air-Quality/Animal-Feeding-Operations.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7227C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 32**.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 34, “Provisions for Air Quality Emissions Trading Programs,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 34. This chapter implemented the federal air emissions trading programs to reduce emissions of specific air pollutants. The air emissions trading programs included in Chapter 34 have either been replaced by other programs or are no longer applicable. Over time, nearly all of the provisions within this chapter have been rescinded.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7212C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the hearing. 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 34.**

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 35, “Air Emissions Reduction Assistance Program,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455B.133(3).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds Chapter 35. This chapter specified the process for the Department of Natural Resources (Department) to provide financial assistance to eligible applicants to reduce air pollution. The rules in Chapter 35 were developed in 2009 in response to grant funds made available to the Department under the American Recovery and Reinvestment Act (ARRA). The rules assisted the Department in creating and implementing the Reduce Iowa Diesel Exhaust (RIDE) grant program. The RIDE program ended in 2011 when the ARRA grant was closed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7217C**.

A public hearing was held by virtual meeting/teleconference on January 29, 2024. Six people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking is adopted:

ITEM 1. Rescind **567—Chapter 35**.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent*)

***16. Chapter 21, “Compliance, Excess Emissions, and Measurement of Emissions” – Final Rule**

The Commission is requested to approve the Final rule to rescind Chapter 21 “Compliance,” and adopt a new Chapter 21, “Compliance, Excess Emissions, and Measurement of Emissions.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 21 includes revised provisions for air quality compliance, excess emissions, and measurement of emissions, which were previously in five separate chapters: Chapters 21, 24, 25, 26, and 29. After review consistent with EO10, the Department determined that the rules in these five chapters should be updated and combined into one chapter, specifically new Chapter 21.

The requirements in new Chapter 21 are authorized under the federal Clean Air Act and Iowa Code section 455B.133. The final rules also include provisions for requesting variances from air quality rules, as allowed under Iowa Code section 455B.143. The new Chapter 21 will help protect air quality for Iowa’s citizens by ensuring that air emissions reporting, monitoring, and compliance continue, and that these rules are clear, current, and consolidated.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7209C. Two public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Jessica Reese McIntyre, Environmental Specialist,
Air Quality Bureau, Program Development & Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 21 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]**Adopted and Filed**

The Environmental Protection Commission (Commission) hereby rescinds Chapter 21, “Compliance,” and adopts a new Chapter 21, “Compliance, Excess Emissions, and Measurement of Emissions,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 21. The new Chapter 21 includes the revised provisions for air quality compliance, excess emissions, and measurement of emissions, which were previously set forth in Chapter 21, “Compliance,” Chapter 24, “Excess Emission,” Chapter 25 “Measurement of Emissions,” Chapter 26, “Prevention of Air Pollution Emergency Episodes,” and Chapter 29, “Qualification in Visual Determination of the Opacity of Emissions.”

After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that the rules in Chapters 21, 24, 25, 26, and 29 should be updated and placed in one chapter, specifically new Chapter 21. Adopted and Filed rulemakings to rescind Chapters 25, 26, and 29 are filed concurrently with this rulemaking. An additional Adopted and Filed Rulemaking is filed concurrently to rescind Chapter 24 and adopt a new Chapter 24 consisting of the provisions for air operating permits. New Chapter 21 will help to protect air quality for Iowa’s citizens by ensuring that emissions reporting, monitoring, and compliance continue and that the rules prescribing these activities are clear, current, and consolidated.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7209C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21

COMPLIANCE, EXCESS EMISSIONS, AND MEASUREMENT OF EMISSIONS

567—21.1(455B) Definitions and compliance requirements. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 22 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim into these rules.

“Air pollution alert” means the action condition declared when the concentrations of air contaminants reach the level at which the first-stage control actions are to begin.

“Air pollution emergency” means the action condition declared when the air quality is continuing to degrade to a level that should never be reached, and that the most stringent control actions are necessary.

“Air pollution episode” means a combination of forecast or actual meteorological conditions and emissions of air contaminants that may or do present an imminent and substantial endangerment to the health of persons, during which the chief meteorological factors are the absence of winds that disperse air contaminants horizontally and a stable atmospheric layer that tends to inhibit vertical mixing through relatively deep layers.

“Air pollution forecast” means an air stagnation advisory issued to the department, the commission, and appropriate air pollution control agencies by an authorized Air Stagnation Advisory Office of the National Weather Service predicting that meteorological conditions conducive to an air pollution episode may be imminent. This advisory may be followed by a prediction of the duration and termination of such meteorological conditions.

“Air pollution warning” means the action condition declared when the air quality is continuing to degrade from the levels classified as an air pollution alert, and where control actions in addition to those conducted under

an air pollution alert are necessary.

“Equipment” means equipment capable of emitting air contaminants to produce air pollution.

“Excess emission” means any emission that exceeds any applicable emission standard prescribed in 567—Chapter 23 or 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), or 567—33.3(455B) or any emission limit specified in a permit or order.

“Existing equipment” means equipment, machines, devices, or installations that were in operation prior to September 23, 1970.

“Malfunction” means any sudden and unavoidable failure of control equipment or of a process to operate in a normal manner. Any failure that is caused entirely or in part by poor maintenance, careless operation, lack of an adequate maintenance program, or any other preventable upset condition or preventable equipment breakdown shall not be considered a malfunction.

“New equipment” means, except for any equipment or modified equipment to which 567—subrule 23.1(2) applies, any equipment or control equipment not under construction or for which components have not been purchased on or before September 23, 1970, and any equipment that is altered or modified after such date, which may cause, eliminate, reduce, or control the emission of air contaminants.

“Opacity” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

“Shutdown” means the cessation of operation of any control equipment or process equipment or process for any purpose.

“Startup” means the setting into operation of any control equipment or process equipment or process for any purpose.

21.1(1) *New equipment.* All new equipment and all new control equipment, as defined herein, installed in this state shall perform in conformance with applicable emission standards specified in 567—Chapter 23.

21.1(2) *Existing equipment.* All existing equipment, as defined herein, shall be operated in conformance with applicable emission standards specified in 567—Chapter 23 or as otherwise specified herein, except that the performance standards specified in 567—subrule 23.1(2) shall not apply to existing equipment.

21.1(3) Emissions inventory. The person responsible for equipment as defined herein shall provide information on fuel use, materials processed, air contaminants emitted (including greenhouse gases as “greenhouse gas” is defined in 567—22.1(455B)), estimated rate of emissions, periods of emissions, or other air pollution information to the director upon the director’s written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The information requested shall be submitted in the electronic format specified by the department, if electronic submittal is provided. All information in regard to both actual and allowable emissions shall be public records, and any publication of such data shall be limited to actual and allowable air contaminant emissions.

21.1(4) Reserved.

21.1(5) Public availability of data. Emission data obtained from owners or operators of stationary sources under the provisions of 21.1(3) and any correlations with applicable emission limitations or other control measures will be made available to the public on the department’s website and upon request.

21.1(6) Maintenance of record. Each owner or operator of any stationary source, as defined herein, shall, upon notification from the director, maintain records of the nature and amounts of air contaminant emissions from such source and any other information as may be deemed necessary by the commission to determine whether such source is in compliance with the applicable emission limitations or other control measures. The information recorded shall be summarized and reported monthly to the director on forms furnished by the department. The initial reporting period shall commence 60 days from the date the director issues notification of the recordkeeping requirements. Records shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

567—21.2(455B) Variances.

21.2(1) Application for variances. A person may make an application for a variance from applicable rules or standards specified in this title.

a. Contents. Each application for a variance shall be submitted to the director and state the following:

(1) The name, address, email address, and telephone number of the person submitting the application or, if such person is a legal entity, the name and address of the individual authorized to accept service of process

on its behalf and the name of the person in charge of the premises where the pertinent activities are conducted.

(2) The type of business or activity involved.

(3) The nature of the operation or process involved, including information on the air contaminants emitted and the estimated amount and rate of discharge of such emissions.

(4) The exact location of the operation or process involved.

(5) The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

(6) Each application shall contain certification of truth and accuracy by a responsible official as defined in 567—24.100(455B). This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information provided are true and accurate.

b. Variance extension. A person may make an application for a variance extension prior to expiration of an approved variance.

21.2(2) *Processing of applications.* Each application for a variance and its supporting material shall be reviewed, and an investigation of the facilities shall be made, by the department for evaluation of the following:

a. Whether or not the emissions involved will produce the following effects:

(1) Endanger or tend to endanger the health of persons residing in or otherwise occupying the area affected by said emissions.

(2) Create or tend to create safety hazards, such as (but not limited to) interference with traffic due to reduced visibility.

(3) Damage or tend to damage any property on land that is affected by said emissions and under other ownership.

b. The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

21.2(3) *Trial burns for alternative fuels.* An alternative fuel shall be defined as a fuel for which the

emissions from combusting the fuel are not known and shall exclude natural gas, coal, liquid propane, and all petroleum distillates.

a. Variance from construction permit. The director may grant a variance for the purpose of testing an alternative fuel and quantifying the emissions from the alternative fuel, except as prohibited under 21.2(4) “c.”

b. Baseline testing. In addition to submitting the information required in 21.2(1), the applicant may be required to submit baseline emission data for all applicable pollutants as a condition of approval.

c. Source testing. Emissions testing deemed necessary for any pollutant may be required as a condition of the variance and shall be conducted in accordance with 21.10(7) “a.”

21.2(4) Decision.

a. Granting of variance. The director shall grant a variance when the director concludes that the action is appropriate. The variance may be granted subject to conditions specified by the director. The director shall specify the time intervals as are considered appropriate for submission of reports on the progress attained.

b. Denial of variance. The director shall deny a variance when the director concludes that the action is appropriate. The applicant may request a review hearing before the commission if the application is denied.

c. Ineligibility for variance. The director shall not grant a variance from any of the following requirements:

- (1) Case-by-case maximum achievable control technology (MACT), 567—paragraph 22.1(1) “b”;
- (2) Prevention of significant deterioration (PSD), 567—Chapter 33, to the extent that variances may not be granted from the preconstruction review and permitting program specified under 567—Chapter 33 (formerly 567—22.4(455B)), or from any PSD requirement contained in a PSD permit issued under 567—Chapter 33, or from any PSD requirement contained in a PSD permit issued under 40 CFR Section 51.166 or 52.21;
- (3) New source performance standards, 567—subrule 23.1(2);
- (4) Emission standards for hazardous air pollutants, 567—subrule 23.1(3);
- (5) Emission standards for hazardous air pollutants for source categories, 567—subrule 23.1(4); or
- (6) Emission guidelines, 567—subrule 23.1(5).

567—21.3 Reserved.

567—21.4(455B) Circumvention of rules. No person shall build, erect, install, or use any article, machine, equipment, or other contrivance that conceals an emission that would otherwise constitute violation of these rules.

567—21.5(455B) Evidence used in establishing that a violation has occurred or is occurring.

Notwithstanding any other provisions of these rules, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any provisions herein.

21.5(1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source. The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

- a.* A monitoring method approved for the source and incorporated in an operating permit pursuant to 567—Chapter 24;
- b.* Compliance test methods specified in 567—21.10(455B);
- c.* Testing or monitoring methods approved for the source in a construction permit issued pursuant to 567—Chapter 22;
- d.* Any monitoring or testing methods provided in these rules; or
- e.* Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in this subrule.

21.5(2) Reserved.

567—21.6(455B) Temporary electricity generation for disaster situations. An electric utility may operate generators at an electric utility substation with a total combined capacity not to exceed two megawatts in capacity for a period of not longer than ten calendar days and only for the purpose of providing electricity generation in the event of a sudden and unforeseen disaster that has disabled standard transmission of electricity to the public. Department approval shall be required if the electric utility intends to operate generators for a period longer than ten calendar days. The electric utility shall provide an oral report to the appropriate department field office and to the department's air quality bureau and shall specify the anticipated duration within eight hours of commencing

use of a generator or at the start of the first working day following the placement of a generator at each site. A written report shall be submitted to the department within 30 calendar days following the cessation of use of the generators. The written report shall state the nature of the sudden and unforeseen disaster, the location of each site, the number of generators used, the capacity of the generators used, the fuel type of the generators, and the duration of use of each generator. For purposes of this rule, the definition of “disaster” shall be as defined in Iowa Code section 29C.2(4), and a disaster may occur before, with, or without a gubernatorial or federal disaster proclamation.

567—21.7(455B) Excess emission reporting.

21.7(1) *Excess emission during periods of startup, shutdown, or cleaning of control equipment.* Excess emission during a period of startup, shutdown, or cleaning of control equipment is not a violation of the emission standard if the startup, shutdown, or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. Cleaning of control equipment that does not require the shutdown of the process equipment shall be limited to one six-minute period per one-hour period.

21.7(2) *Initial report of excess emission.*

a. An incident of excess emission (other than an incident of excess emission during a period of startup, shutdown, or cleaning) shall be reported to the appropriate regional office of the department within eight hours of the onset of the incident or at the start of the first working day following the onset of the incident. The reporting exemption for an incident of excess emission during startup, shutdown, or cleaning does not relieve the owner or operator of a source with continuous monitoring equipment of the obligation of submitting reports required in 21.10(6).

b. An initial report of excess emission is not required for a source with operational continuous monitoring equipment (as specified in 21.10(1)) if the incident of excess emission continues for less than 30 minutes and does not exceed the applicable emission standard by more than 10 percent or the applicable visible emission standard by more than 10 percent opacity.

c. The initial report shall be made by electronic mail (email), in person, or by telephone and shall include at a minimum the following:

- (1) The identity of the equipment or source operation from which the excess emission originated and the associated stack or emission point.
- (2) The estimated quantity of the excess emission.
- (3) The time and expected duration of the excess emission.
- (4) The cause of the excess emission.
- (5) The steps being taken to remedy the excess emission.
- (6) The steps being taken to limit the excess emission in the interim period.

21.7(3) *Written report of excess emission.* A written report of an incident of excess emission shall be submitted as a follow-up to all required initial reports to the department within seven days of the onset of the upset condition, and shall include as a minimum the following:

- a. The identity of the equipment or source operation point from which the excess emission originated and the associated stack or emission point.
- b. The estimated quantity of the excess emission.
- c. The time and duration of the excess emission.
- d. The cause of the excess emission.
- e. The steps that were taken to remedy and to prevent the recurrence of the incident of excess emission.
- f. The steps that were taken to limit the excess emission.
- g. If the owner claims that the excess emission was due to malfunction, documentation to support this claim.

21.7(4) *Excess emissions.* An incident of excess emission (other than an incident during startup, shutdown, or cleaning of control equipment) is a violation. If the owner or operator of a source maintains that the incident of excess emission was due to a malfunction, the owner or operator must show that the conditions that caused the incident of excess emission were not preventable by reasonable maintenance and control measures. Determination of any subsequent enforcement action will be made following review of this report. If excess emissions are occurring, either the control equipment causing the excess emission shall be repaired in an expeditious manner or

the process generating the emissions shall be shut down within a reasonable period of time. An expeditious manner is the time necessary to determine the cause of the excess emissions and to correct it within a reasonable period of time. A reasonable period of time is eight hours plus the period of time required to shut down the process without damaging the process equipment or control equipment. In the case of an electric utility, a reasonable period of time is eight hours plus the period of time until comparable generating capacity is available to meet consumer demand with the affected unit out of service, unless the director shall, upon investigation, reasonably determine that continued operation constitutes an unjustifiable environmental hazard, issue an order that such operation is not in the public interest, and require a process shutdown to commence immediately.

567—21.8(455B) Maintenance and repair requirements.

21.8(1) *Maintenance and repair.* The owner or operator of any equipment or control equipment shall:

- a.* Maintain and operate the equipment or control equipment at all times in a manner consistent with good practice for minimizing emissions.
- b.* Remedy any cause of excess emissions in an expeditious manner.
- c.* Minimize the amount and duration of any excess emission to the maximum extent possible during periods of such emissions. These measures may include but not be limited to the use of clean fuels, production cutbacks, or the use of alternate process units or, in the case of utilities, purchase of electrical power until repairs are completed.
- d.* Implement measures contained in any contingency plan prepared in accordance with 21.8(2) “c.”
- e.* Schedule, at a minimum, routine maintenance of equipment or control equipment during periods of process shutdown to the maximum extent possible.

21.8(2) *Maintenance plans.* A maintenance plan will be required for equipment or control equipment where in the judgment of the director a continued pattern of excess emissions indicative of inadequate operation and maintenance is occurring. The maintenance plan shall include but not be limited to the following:

- a.* A complete preventive maintenance schedule, including identification of the persons responsible for inspecting, maintaining, and repairing control equipment, a description of the items or conditions that will be inspected, the frequency of these inspections or repairs, and an identification of the replacement parts that will be

maintained in inventory for quick replacement.

b. An identification of the equipment and air pollution control equipment operating variables that will be monitored in order to detect a malfunction or failure, the normal operating range of these variables, and a description of the method of monitoring and surveillance procedures.

c. A contingency plan for minimizing the amount and duration of any excess emissions to the maximum extent possible during periods of such emissions.

567—21.9(455B) Compliance with other requirements. The excess emissions provisions in 567—21.7(455B) and 567—21.8(455B) do not relieve the owner or operator of an emissions source subject to the new source performance standards (567—subrule 23.1(2)), the national emissions standards for hazardous air pollutants (567—subrule 23.1(3)), or the national emissions standards for hazardous air pollutants for source categories (567—subrule 23.1(4)) from complying with those requirements.

567—21.10(455B) Testing and sampling of new and existing equipment.

21.10(1) *Continuous monitoring of opacity from coal-fired steam generating units.* The owner or operator of any coal-fired or coal-gas-fired steam generating unit with a rated capacity of greater than 250 million Btu per hour heat input shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity. If an exhaust services more than one steam generating unit as defined in the preceding sentence, the owner has the option of installing opacity monitoring equipment on each unit or on the common stack. Such monitoring equipment shall conform to performance specifications specified in 21.10(9) and shall be operational within 18 months of the date these rules become effective. The director may require the owner or operator of any coal-fired or coal-gas-fired steam generating unit to install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity whenever the compliance status, history of operations, ambient air quality in the vicinity surrounding the generator, or the type of control equipment utilized would warrant such monitoring.

21.10(2) and **21.10(3)** Reserved.

21.10(4) *Continuous monitoring of sulfur dioxide from sulfuric acid plants.* The owner or operator of any sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100

percent acid, shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor sulfur dioxide emissions. The monitoring equipment shall conform to the minimum performance specifications specified in 21.10(9) and shall be operational within 18 months of the date these rules become effective.

21.10(5) *Maintenance of records of continuous monitors.* The owner or operator of any facility that is required to install, calibrate, maintain, and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

21.10(6) *Reporting of continuous monitoring information.* The owner or operator of any facility required to install a continuous monitoring system or systems shall provide quarterly reports to the director, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. This provision shall not excuse compliance with more stringent applicable reporting requirements. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, the number of hours that the source was operated while the monitoring equipment was not in operation, and any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

21.10(7) *Tests by owner.* The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

a. General. The owner of new or existing equipment or the owner's authorized agent shall notify the department in writing not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. Such notice shall include the time, the date, the place, the name of the person who will conduct the tests, and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department may not consider the test results or performance evaluation results to be

a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held not later than 15 days before the owner or operator conducts the compliance demonstration. A testing protocol shall be submitted to the department for review no later than 15 days before the owner or operator conducts the compliance demonstration. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks (42 days) of the completion of the testing.

b. New equipment. Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of startup, unless a shorter time frame is specified in the permit.

c. Existing equipment. The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

21.10(8) Tests by department. Representatives of the department may conduct separate and additional air contaminant emission tests and continuous monitor performance tests of an installation on behalf of the state and at the expense of the state. Sampling holes, safe scaffolding, and pertinent allied facilities, but not instruments or sensing devices, as needed, shall be requested in writing by the director and shall be provided by and at the expense of the owner of the installation at such points as specified in the request. The owner shall provide a suitable power source to the point or points of testing so that sampling instruments can be operated as required.

Analytical results shall be furnished to the owner.

21.10(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 the U.S. Environmental Protection Agency (EPA) reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023). Each test shall consist of at least three separate one-hour test runs. Unless otherwise specified by the department, EPA method, or regulation, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs. 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.

b. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specifications and quality assurance procedures are conducted.

c. Permit and compliance demonstration requirements. After October 24, 2012, all stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or required in a permit issued by the department pursuant to 567—Chapter 22 or 33 shall be conducted using the methodology referenced in this rule. If stack sampling was required for a compliance demonstration pursuant to 567—Chapter 23 or for a performance test required in a permit issued by the department pursuant to 567—Chapter 22 or 33 before October 24, 2012, and the demonstration or test was not required to be completed before

October 24, 2012, then the methodology referenced in this subrule applies retroactively.

21.10(10) Exemptions from continuous monitoring requirements.

a. The owner or operator of any source is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

(1) An affected source is subject to a new source performance standard.

(2) Reserved.

(3) An affected steam generator is scheduled to be retired from service within five years of the date these rules become effective.

b. The director may provide a temporary exemption from the monitoring and reporting requirements during any period of monitoring system malfunction, provided that the source owner or operator shows, to the satisfaction of the director, that the malfunction was unavoidable and is being repaired as expeditiously as practical.

21.10(11) Extensions. The owner or operator of any source may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

567—21.11(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F, and K, as amended through August 30, 2016, are adopted by reference.

567—21.12(455B) Affected sources subject to Section 112(g). The owner or operator of an affected source subject to the requirements of the federal Clean Air Act, Section 112(g), shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

567—21.13(455B) Methodology and qualified observer. The federal method for visual determination of opacity of emissions and requirements for qualified observers as defined in 40 CFR Part 60, Appendix A, Method 9, as amended through November 14, 1990, is adopted by reference.

To qualify as an observer, a candidate must, after meeting the requirements established in 40 CFR Part 60, Appendix A, Method 9, have on record with the department a minimum of 250 readings of black plumes and 250 readings of white plumes, taken at approved smoke reading courses.

567—21.14(455B) Prevention of air pollution emergency episodes—general. The provisions for the purpose specified in 40 CFR Part 51, Appendix L, 1.0, are adopted by reference. For purposes of this chapter, adoption by reference of any portion of 40 CFR Part 51, Appendix L, is, unless otherwise noted, as amended through July 1, 1987.

567—21.15(455B) Episode criteria.

21.15(1) *Evaluation.* Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the commission or the director determines that the meteorological conditions are such that the accumulation of air contaminants in any place is reaching, or has reached, levels that could, if sustained or exceeded, lead to a substantial threat to the health of persons.

21.15(2) *Air pollution forecast.* Initial consideration of air pollution episode activities will be activated by receipt from the National Weather Service of an air pollution forecast. Receipt of such a forecast shall be the basis for activities such as, but not limited to, increased monitoring of the air contaminants in the area involved.

21.15(3) *Declaration.* In making determinations for the declaration of an air pollution episode condition, the commission or the director will be guided by the criteria stated in the following paragraphs:

a. Air pollution alert. The provisions for an air pollution alert as specified in 40 CFR Part 51, Appendix L, 1.1(b), are adopted by reference.

b. Air pollution warning. The provisions for an air pollution warning as specified in 40 CFR Part 51, Appendix L, 1.1(c), are adopted by reference.

c. Air pollution emergency. The provisions for air pollution emergency as specified in 40 CFR Part 51, Appendix L, 1.1(d), are adopted by reference.

d. Termination. Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. As meteorological factors and air contaminants change, an

appropriate change in episode level will be declared.

567—21.16(455B) Preplanned abatement strategies. The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, 1.3(a), are adopted by reference.

21.16(1) *Plan preparation.*

a. Any person responsible for the operation of a source of air contaminants as set forth in Tables I through III shall prepare standby plans for reducing the emission of air contaminants, which will be implemented upon the declaration of an air pollution episode and continued for the duration of the declared episode.

b. The provisions for plan preparation as specified in 40 CFR Part 51, Appendix L, 1.3(b), are adopted by reference.

21.16(2) *Plan content.* The provisions for plan content as specified in 40 CFR Part 51, Appendix L, 1.3(c), are adopted by reference.

21.16(3) *Review of plans.* Standby plans as required by this subrule shall be submitted to the director on or before January 1, 1973. Each standby plan shall be subject to review. If, in the opinion of the director, a standby plan does not provide for adequate reduction of emissions, the director may disapprove the plan, state the reasons for disapproval, and order the preparation of an amended standby plan within a time period specified in the order. The action of the director in securing a modification of a standby plan may be appealed to the commission.

21.16(4) *Availability.* The provisions for availability as specified in 40 CFR Part 51, Appendix L, 1.3(d), are adopted by reference.

567—21.17(455B) Actions taken during episodes.

21.17(1) *Emission reduction activities.* Any person responsible for the operation of a source of air contaminants as set forth in Tables I through III, herein, that is located within the area involved shall follow the actions specified below during periods of an air pollution alert, air pollution warning, or air pollution emergency as may be declared.

a. *Air pollution alert.* The provisions for an air pollution alert as specified in 40 CFR Part 51, Appendix L, 1.2(a), are adopted by reference.

b. Air pollution warning. The provisions for air pollution warning as specified in 40 CFR Part 51, Appendix L, 1.2(b), are adopted by reference.

c. Air pollution emergency. The provisions for air pollution emergency as specified in 40 CFR Part 51, Appendix L, 1.2(c), are adopted by reference.

d. Special conditions. The provisions for special conditions as specified in 40 CFR Part 51, Appendix L, 1.2(d), are adopted by reference.

21.17(2) Reserved.

TABLE I

ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS ALERT LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table I, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table I, Part B, are adopted by reference.

TABLE II

ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS WARNING LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table II, Part A, are adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table II, Part B, are adopted by reference.

TABLE III

ABATEMENT STRATEGIES EMISSION REDUCTION ACTIONS EMERGENCY LEVEL

GENERAL

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table III, Part A, are

adopted by reference.

SOURCE CURTAILMENT

The provisions for planned strategies as specified in 40 CFR Part 51, Appendix L, Table III, Part B, are adopted by reference.

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

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

Decision Item (**indicates proposed consent item*)

***17. Chapter 22, “Controlling Air Pollution” – Final Rule**

The Commission is requested to approve the Final Rule to rescind Chapter 22, “Controlling Pollution,” and replace it with a new Chapter 22, “Controlling Air Pollution.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: The Department determined that the rules in Chapters 22 and 28, as well as the appropriate definitions in Chapter 20, should be updated and placed in one chapter, specifically a new Chapter 22. The new Chapter 22 includes revised and streamlined provisions for air quality construction permitting, as well as the applicable air quality definitions from Chapter 20 and the adoption by reference of the National Ambient Air Quality Standards (NAAQS) from Chapter 28. The rules for operating permits that were in Chapter 22 have been moved to a new Chapter 24.

The updated rules help to protect air quality for Iowa’s citizens by ensuring that new and modified stationary sources of air pollution continue to demonstrate through the construction permitting process that the proposed project emissions, when considered in conjunction with existing air emissions, will not impact the attainment or maintenance of the NAAQS. Further, new Chapter 22 provides businesses and the public with clear, current, and consolidated permitting requirements.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7228C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: No comments were received during the hearings. The Department received written comments from the Association of Business and Industry (ABI) during the public comment period. The Department is working with ABI to streamline the Department’s air quality modeling procedures and is planning to conduct future stakeholder workgroups regarding updates to the construction permit exemptions. Please see the attached Public Participation Responsiveness Summary for more information. No changes were made to the final rules in response to the comments.

The final rule is identical to the NOIA, with the exception of a minor correction made to rule 22.4. In the first sentence of rule 22.4, the word “program” was added after the word “PSD.”

Effective Date of Final Rule: June 19, 2024

Christine Paulson, Environment Specialist Senior
Air Quality Bureau, Program Development and Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 22 –Final Rule & Public Participation Responsiveness Summary

**PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR
567 IOWA ADMINISTRATIVE CODE
Chapter 22**

Reason for Rulemaking

This final rule for Chapter 22 is the result of the Air Quality Bureau's Executive Order 10 (EO10) rule review. As required by EO10 and with stakeholder participation and input, the Environmental Protection Commission rescinds and replaces several of its rule chapters to provide up-to-date and streamlined rules for the Department of Natural Resources' air quality program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7228C**, and public hearings were held on January 29 and January 30, 2024. The Department of Natural Resources (Department) received no comments at the public hearing. The Department received one written comment prior to the January 30 deadline for public comments.

Public Comment

Submitted on January 29, 2024, by e-mail from Nicole Crane, Executive Vice President, Iowa Association of Business and Industry (ABI), Des Moines, Iowa, and referencing comments submitted on September 28, 2023, by JD Davis of ABI:

Although not specifically outlined in the rule revisions, ABI supports changes to DNR's approach to dispersion modeling. ABI also supports future opportunities to expand some of the permit exemptions that DNR referenced in earlier meetings but may not be reflected in the rule revisions.

Thank you for the opportunity to put forward comments.

Department Response

The Department is working with ABI to streamline the Department's air quality modeling procedures and is planning to conduct future stakeholder workgroups regarding updates to the construction permit exemptions.

Recommended Action

The Department recommends no changes to the final rules from what was proposed in the Notice of Intended Action.

ENVIRONMENTAL PROTECTION COMMISSION [567]**Adopted and Filed**

The Environmental Protection Commission (Commission) hereby rescinds Chapter 22, “Controlling Pollution,” and adopts a new Chapter 22, “Controlling Air Pollution,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 22. The new Chapter 22 includes revised provisions for air quality construction permitting, as well as applicable air quality definitions previously set forth in Chapter 20, “Scope of Title—Definitions,” and adoption of the National Ambient Air Quality Standards (NAAQS) previously set forth in Chapter 28, “Ambient Air Quality Standards.”

After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that the rules in Chapters 22 and 28, as well as the appropriate definitions in Chapter 20, should be updated and placed in one chapter, specifically new Chapter 22. The Department also concluded that the rules for operating permits currently in Chapter 22 should be moved to another chapter that includes only these provisions. Adopted and Filed rulemakings to rescind Chapters 20 and 28 are filed concurrently with this rulemaking. An additional Adopted and Filed rulemaking is filed concurrently to rescind Chapter 24 and adopt a new Chapter 24 consisting of the provisions for operating permits.

The new Chapter 22 helps to protect air quality for Iowa’s citizens by ensuring that new and modified stationary sources of air pollution continue to demonstrate through the construction permitting process that the

proposed project emissions, when considered in conjunction with existing air emissions, will not impact the attainment or maintenance of the NAAQS. Further, new Chapter 22 provides businesses and the public with clear, current, and consolidated permitting requirements.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7228C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearings. No comments were received during the hearings. The Department received written comments from the Association of Business and Industry (ABI) during the public comment period that concluded on January 30. The Department is working with ABI to streamline the Department's air quality modeling procedures and is planning to conduct future stakeholder workgroups regarding updates to the construction permit exemptions. The Department's Public Participation Responsiveness Summary is available from the Department, upon request. No changes were made to the final rules in response to the comments.

The adopted amendments are identical to those proposed in the Notice of Intended Action, with the exception of a minor correction made to rule 22.4. In the first sentence of rule 22.4, the word "program" was added after the word "PSD."

Adoption of Rule Making

This rule making was adopted by the Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result

in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22

CONTROLLING AIR POLLUTION

567—22.1(455B) Definitions and permit requirements for new or existing stationary sources. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this chapter. Additional definitions potentially applicable to this chapter are set forth in 567—Chapters 21 and 23. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

“12-month rolling period” means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

“Act” means the Clean Air Act (42 U.S.C. Sections 7401, et seq.), as amended through November 15, 1990.

“Air quality standard” means an allowable level of air contaminant or atmospheric air concentration

established by the commission.

“*Ambient air*” means that portion of the atmosphere, external to buildings, to which the general public has access.

“*Anaerobic lagoon*,” for purposes of air quality rules in 567—Chapters 20 through 35, means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

1. A runoff control basin that collects and stores only precipitation-induced runoff from an open feedlot feeding operation; or
2. A waste slurry storage basin that receives waste discharges from confinement feeding operations and that is designed for complete removal of accumulated wastes from the basin at least semiannually; or
3. Any anaerobic treatment system that includes collection and treatment facilities for all off-gases.

“*Biodiesel fuel*” means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat such as, but not limited to, soybean oil. For purposes of this definition, “biodiesel fuel” must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D 6751-02, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Act.

“*Chimney*” or “*stack*” means any flue, conduit or duct permitting the discharge or passage of air contaminants into the open air or constructed or arranged for this purpose.

“*Combustion for indirect heating*” means the combustion of fuel to produce usable heat that is to be transferred through a heat-conducting materials barrier or by a heat storage medium to a material to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

“*Control equipment*” means any equipment that has the function to prevent the formation of or the emission to the atmosphere of air contaminants from any fuel burning, incinerator or process equipment.

“*Country grain elevator*” means the same as defined in 22.10(1).

“Diesel fuel” means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the ASTM D 975-02, “Standard Specification for Diesel Fuel Oils,” grade 1-GT or 2-GT, as defined by ASTM D 2880-00, “Standard Specification for Gas Turbine Fuel Oils,” or grade 1 or 2, as defined by ASTM D 396-02, “Standard Specification for Fuel Oils.”

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as “biodiesel fuel” is defined in this rule.
2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph “1” to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.
3. Construction permits or operating permits issued under 567—Chapter 22 that restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in paragraph “1,” unless otherwise specified or in a permit issued under this chapter.

“Electric furnace” means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

“Electronic format,” “electronic submittal,” or *“electronic submittal format,”* for purposes of 567—Chapters 20 through 35, means a software, Internet-based, or other electronic means specified by the department for submitting air quality information or fees to the department related to but not limited to applications, certifications, determination requests, emissions inventories, forms, notifications, payments, permit applications and registrations. References to these information submittal methods in 567—Chapters 20 through 35 may, as specified by the department, include electronic submittal as stated in the applicable rules.

“Emergency generator” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency is an unforeseeable condition that is beyond the control of the owner or operator. An emergency generator does not include:

1. Peaking units at electric utilities.
2. Generators at industrial facilities that typically operate at low rates but are not confined to emergency purposes.
3. Any standby generators that are used during time periods when power is available from the electric

utility.

“*Emission limitation*” or “*emission standard*” mean a requirement established by a state, local government, or the administrator that limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

“*EPA conditional method*” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“*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 March 29, 2023); 40 CFR 60, Appendix A (as amended or corrected through March 29, 2023); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through March 29, 2023).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended or corrected through June 28, 2023); 40 CFR 60, Appendix F (as amended or corrected through March 29, 2023); 40 CFR 75, Appendix A (as amended or corrected through August 30, 2016); 40 CFR 75, Appendix B (as amended or corrected through August 30, 2016); and 40 CFR 75, Appendix F (as amended or corrected through August 30, 2016).

“*Equipment*” means the same as defined in 567—21.1(455B).

“*Excess air*” means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

“*Existing equipment*” means the same as defined in 567—21.1(455B).

“*Foundry cupola*” means a stack-type furnace used for melting of metals consisting of but not limited to the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other

auxiliaries.

“*Fugitive dust*” means any airborne solid particulate matter emitted from any source other than a flue or stack.

“*Grain processing*” means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for “feed mill equipment” as defined in 567—22.10(455B).

“*Grain storage elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant that has a permanent grain storage capacity (grain storage capacity that is inside a building, bin, or silo) of more than 35,200 m³ (ca. 1 million U.S. bushels).

“*Greenhouse gas*” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

“*Heating value*” means the heat released by combustion of one pound of waste or fuel measured in Btu on an as-received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D 2015-66.

“*Incinerator*” means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently and from which the solid residues contain little or no combustible material.

“*Initiation of construction, installation or alteration*” means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

“*New equipment*” means the same as defined in 567—21.1(455B).

“*Number 1 fuel oil*” and “*number 2 fuel oil*,” also known as “distillate oil,” mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the ASTM D 396-02, “Standard Specification for Fuel Oils.”

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as “biodiesel fuel” is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in paragraph “1” to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under this chapter that restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by the department to include the biodiesel fuel blends specified in paragraph “1,” unless otherwise specified or in a permit issued under this chapter.

“One-hour period” means any 60-minute period commencing on the hour.

“Particulate matter” (except for the purposes of new source performance standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

“Plan documents” means the reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications and all other information pertaining to equipment.

“PM10” means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

“PM2.5” means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years.
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years.
3. The number of hours specified in a state or federally enforceable limit.

If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit.

“*Privileged communication*” means information other than air pollutant emissions data, the release of which would tend to affect adversely the competitive position of the owner or operator of the equipment.

“*Process*” means any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant.

“*Process weight*” means the total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

“*Process weight rate*” means continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or for a cyclical or batch source operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the number of hours of actual process operation during such a period. Where the nature of any process or operation, or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

“*Six-minute period*” means any one of the ten equal parts of a one-hour period.

“*Smoke*” means gas-borne particles resulting from incomplete combustion, consisting predominantly, but

not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

“*Source operation*” means the last operation preceding the emission of an air contaminant and that results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants but is not an air pollution control operation.

“*Standard conditions*” means a temperature of 68°F and a pressure of 29.92 inches of mercury absolute.

“*Standard cubic foot*” or “*SCF*” means the volume of one cubic foot of gas at standard conditions.

“*Standard metropolitan statistical area*” or “*SMSA*” means an area that has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Office of Management and Budget (Department of Commerce).

“*Stationary source*” means any building, structure, facility or installation that emits or may emit any air pollutant.

“*Total suspended particulate*” means particulate matter as defined in this rule.

“*Untreated*” as it refers to wood or wood products includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. “*Untreated*” as it refers to seeds, pellets or other vegetative matter includes only seeds, pellets or other vegetative matter that has not been treated with pesticides or fungicides.

“*Urban area*” means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

“*Variance*” means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through February 8, 2023.

22.1(1) Permit required. No person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon unless a permit is first obtained pursuant to this chapter, 567—31.3(455B), or 567—33.3(455B), or the equipment qualifies for an exemption under 22.1(2). An air quality construction permit

shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon, unless the parameters in 22.1(1) “c” are met.

a. Existing equipment is not subject to this subrule, unless it has been modified, reconstructed, or altered on or after September 23, 1970.

b. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR Section 63.2 and 40 CFR Section 63.41 as adopted by reference in 567—subrule 23.1(4), unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. Construction prior to issuance of an air quality construction permit issued by the department may begin if the eligibility requirements stated in 22.1(1) “c”(1) are met. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in 22.1(3);

2. The applicant has notified the department of the applicant’s intentions in writing five working days prior to initiating construction; and

3. The equipment or process is not subject to:

- Prevention of significant deterioration (PSD), as set forth in 567—Chapter 33;

- New source performance standards (NSPS), as set forth in 567—subrule 23.1(2);

- National emission standards for hazardous air pollutants (NESHAP), as set forth in 567—subrules 23.1(3) and 23.1(4);

- Emission guidelines, as set forth in 567—subrule 23.1(5);

- Nonattainment new source review, as set forth in 567—Chapter 31; or

- The equipment or process is a major source of hazardous air pollutants, as defined in 40 CFR Sections 63.2 and 63.41, and as adopted by reference in 567—subrule 23.1(4).

The equipment and processes are subject to PSD until the owner or operator of a proposed project legally obtains permitted limits that limit the project below the PSD thresholds (i.e., PSD synthetic minor status).

(2) The applicant must cease construction if the department’s evaluation demonstrates that the construction, reconstruction or modification of the stationary source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through February 19, 2015.

(3) The applicant will be required to make any modification to the stationary source that may be imposed in the issued construction permit.

(4) The applicant must notify the department in writing of the actual start date of construction or reconstruction. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3) “b.”

d. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment,” as these terms are defined in 22.10(1), may elect to comply with the requirements specified in 567—22.10(455B) as an alternative to the construction permitting requirements set forth in 22.1(1).

22.1(2) Exemptions. An owner or operator may opt to use one of the permitting exemptions in this subrule in lieu of obtaining an air quality construction permit if the equipment, control equipment, or process meets the conditions in the specific exemption and is not:

A permitting exemption may be used only if a permit is not necessary to establish federally enforceable limits that restrict potential to emit.

An owner or operator shall keep records at the facility and will make the records available to the department upon request if any of the exemptions under the following paragraphs are claimed:

- 22.1(2) “a” (for equipment > 1 million Btu per hour input),

- 22.1(2) “b,”
- 22.1(2) “e,”
- 22.1(2) “r,” or
- 22.1(2) “s.”

Records kept on site shall contain the following information:

- The specific exemption claimed; and
- A description of the associated equipment.

The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or indirect cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR Section 279.11 as amended through July 14, 2006, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in 567—22.1(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, that is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1(6), or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—21.1(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. Fugitive dust controls, unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment that reduces or eliminates all emission to the atmosphere. An owner or operator electing to use this exemption shall provide to the department the following information:

(1) Name and location of the facility;

(2) Detailed description of each change being made;

(3) Date of the beginning of actual construction and date that operation will begin after the changes are made;

(4) Detailed emissions estimates showing:

1. The actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in 567—24.100(455B)); and

2. The accumulated emissions increases associated with each change when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction of the particular change commences).

(5) Documentation of the basis for all emissions estimates;

(6) Height of the emission point or stack and height of the highest building within 50 feet;

(7) Statement that the provisions of 567—Chapters 31 and 33 do not apply; and

(8) Written statement containing certification by a responsible official as defined in 567—24.100(455B) of truth, accuracy, and completeness that:

1. Accumulated emissions with other contemporaneous net increases have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23), and adopted in 567—33.3(455B);

2. The changes will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B);

3. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

The conditions listed below also apply to this exemption:

- If an owner or operator opts to use this exemption for equipment or a process not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project.

- If an owner or operator opts to use this exemption for equipment or a process that has already been constructed or modified and that does not have a construction permit for that construction or modification, the owner or operator shall not operate until the information listed above is provided to the department.

- If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.

- If an owner or operator wishes to obtain credit for emission reductions, an air quality construction permit must be obtained for the reduction prior to the time the reduction is made.

h. Equipment (other than anaerobic lagoons) or control equipment that emits odors, unless such equipment or control equipment also emits particulate matter or any other regulated air contaminant (as defined in 567—24.100(455B)).

i. Reserved.

j. Residential heaters, cookstoves, or fireplaces that burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR Section 61.145 as adopted by reference in 567—subrule 23.1(3).

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems that include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only handheld aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration on forms provided by the

department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form) certifying that the engine is in compliance with the following federal regulations:

- (1) NSPS for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart III); or
- (2) NSPS for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and
- (3) NESHAP for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR Section 1068.30, as amended through January 24, 2023, is exempt from the registration requirements of this paragraph).

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than 1 million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. “Maximum true vapor pressure” means the equilibrium partial pressure of the material considering:

- (1) For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or
- (2) For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in 567—24.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);

2. 5 tons per year of sulfur dioxide;

3. 5 tons per year of nitrogen oxides;

4. 5 tons per year of volatile organic compounds;

5. 5 tons per year of carbon monoxide;

6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);

7. 2.5 tons per year of PM10;

8. 0.52 tons per year of PM2.5 (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); and

9. 5 tons per year of hazardous air pollutants (as defined in 567—24.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in 567—24.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in 567—24.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If a construction permit is requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units obtaining the exemption. Controls that may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections and shall be provided to the director or the director’s representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, the applicant shall maintain a copy of any report of manufacturer’s testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar

emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2) “w”(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a “small unit,” then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without

the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a substantial small unit. The owner or operator shall notify the department in writing at least ten days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2) “w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2) “w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, “substantial small unit” means a small unit that emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);

7. 1.875 tons per year of PM10;

8. 0.4 tons per year of PM2.5 (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a “substantial small unit” only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2) “w”(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within five working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) “Cumulative notice threshold” means the total combined emissions from all substantial small units using the small unit exemption that emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp), as amended through November 7, 1986);
7. 15 tons per year of PM10;
8. 10 tons per year of PM2.5 (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013); or
9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating

equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 567—24.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases that are hazardous air pollutants as defined in 567—24.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, recordkeeping or reporting requirements under 567—subrule 23.1(2), 23.1(3) or 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable handheld aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

$Y = \text{the greater of } 1380x - 19,200 \text{ or } 200,000 \text{ for GMAW, or}$

$Y = \text{the greater of } 187x - 2,600 \text{ or } 28,000 \text{ for SMAW or FCAW}$

Where “x” is the minimum distance to the property line in feet and “Y” is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 12,500 pounds per year for GMAW and 1,600 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode

usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of $84x - 1,200$ or 12,500 for GMAW, or

Y = the greater of $11x - 160$ or 1,600 for SMAW or FCAW

Where “x” is the minimum distance to the property line in feet and “Y” is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—2.1(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR 51.100(pp) as amended through November 7, 1986);
7. 2.5 tons per year of PM₁₀;
8. 0.52 tons per year of PM_{2.5} (does not apply to research and development activities that commenced on or before October 23, 2013); and
9. 5 tons per year of hazardous pollutants (as defined in 567—24.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in 22.1(2)“*kk*”(1). These records shall:

1. Include a list of equipment that is included under the exemption;
2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer’s testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
4. Be maintained on site for a minimum of two years, be made available for review during

normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to 567—22.4(455B) and 567—24.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, “research and development activities” shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel;
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products;
3. That do not manufacture more than de minimus amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimus manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC-containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal

combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in 567—24.100(455B).

oo. A nonroad diesel fueled engine, as “nonroad engine” is defined in 40 CFR Section 1068.30 as amended through January 24, 2023, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer’s nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit. Construction permit applications, including the information referenced above and in 567—22.1(455B) through 567—22.10(455B), shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in

567—Chapter 65.

a. Regulatory applicability determinations. If requested in writing, the director will review the design concepts of equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

- (1) Preliminary plans and specifications of equipment and related control equipment.
- (2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.
- (3) The estimated emission rates of any air contaminants that are to be considered.
- (4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.
- (5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while the employee is doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the

completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B);

(8) Reserved.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects that are intended to be located at a site only for the duration of the specific, identified construction project; and

(10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33;

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department; and

(11) Quantity of greenhouse gas emissions for all applications for projects that will or do have greenhouse gas emissions. For all applications for projects that will not or do not have greenhouse gas emissions, the applicant shall indicate in the application that no greenhouse gases will be emitted and the applicant will not be required to file an inventory of greenhouse gases with that application, unless requested by the department.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning

maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in 567—Chapter 65;

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

567—22.2(455B) Processing permit applications.

22.2(1) *Incomplete applications.* The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) *Public notice and participation.* A notice of intent to issue a construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) Final notice. The department shall notify the applicant in writing of the issuance or denial of a construction permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

567—22.3(455B) Issuing permits.

22.3(1) Stationary sources other than anaerobic lagoons. In no case shall a construction permit that results in an increase in emissions be issued to any facility that is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan (SIP). If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit. A construction permit shall be issued when the director concludes that the preceding requirement has been met and:

- a. That the required plans and specifications represent equipment that reasonably can be expected to comply with all applicable emission standards, and
- b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—22.11(455B), and
- c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and
- d. That the applicant has met all other applicable requirements.

22.3(2) Anaerobic lagoons. A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of 567—Chapter 65.

22.3(3) Conditions of approval. A permit may be issued subject to conditions that shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

- (1) The date or dates required by 22.3(3) “*b*” for which the notice is being submitted.
- (2) Facility name.
- (3) Facility address.
- (4) DNR-assigned facility number.
- (5) DNR air construction permit number.
- (6) The name or the number of the emission unit or units in the notification.
- (7) The emission point number or numbers in the notification.
- (8) The name and signature of a company official.
- (9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. Reserved.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least seven days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (email), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is

relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department's Internet website. The owner or operator will be notified by the department at least ten days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirement under local, state or federal law.

22.3(4) Denial of a permit.

a. When an application for a construction permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) Modification of a permit. The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) Limits on hazardous air pollutants. The department may limit a source's hazardous air pollutant potential to emit, as defined in 567—24.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) *Revocation of a permit.* The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) *Ownership change of permitted equipment.* The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

- a. The date of ownership change;
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and
- c. The construction permit number of the equipment changing ownership.

567—22.4(455B) Major stationary sources located in areas designated attainment or unclassified (PSD).

As applicable, the owner or operator of a stationary source shall comply with the rules for new source review (NSR) for the PSD program as set forth in 567—Chapter 33. An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

567—22.5(455B) Major stationary sources located in areas designated nonattainment.

As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

567—22.6 Reserved.

567—22.7(455B) Alternative emission control program (bubble concept).

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR Section 81.316) or located in an area with an approved SIP

demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

- a. The applicant is presently in compliance with EPA-approved SIP requirements, or
- b. The applicant is subject to a consent order to meet an EPA-approved compliance schedule and the

final compliance date will not be delayed by the use of alternative emission limits.

Emission limits for individual emission points included in 567—23.3(455B) (except 23.3(2) “d,” 23.3(2) “b”(3), and 23.3(3) “a”(3)) and 567—23.4(455B) (except 23.4(12) “b” and 23.4(6)) may be replaced by alternative emission limits. Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

22.7(2) *Demonstration requirements.* The applicant for the alternative emission control program shall have the burden of demonstrating that:

- a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Act;

- b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact (in the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff);

- c. The pollutants being exchanged are comparable and within the same pollutant category;

- d. Hazardous air pollutants designated in 40 CFR Part 61, as adopted by reference in 23.1(3), will not be exchanged for nonhazardous air pollutants;

- e. The alternative program will not result in any delay in compliance by any source. Specific situations may require additional demonstration as specified in 44 FR 71780-71788, December 11, 1979, or as requested by the director.

- f. The owner or operator of any facility applying for an alternative emission control program that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B). The

equipment shall be operational within three months of EPA approval of an alternative emission control program.

22.7(3) Approval process.

a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.

b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.

c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the SIP. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

567—22.8(455B) Permit by rule.

22.8(1) Permit by rule for spray booths. Spray booths that comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

a. Definition. “Sprayed material” is material applied by spray equipment when used in a surface coating process in a spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule.

b. Facilities that facility-wide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1) “*e*” to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if

the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

c. Facilities that facility-wide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)“e” to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) that is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep SDS or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

d. Facilities that facility-wide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by 22.1(1) and 22.1(3), unless

otherwise exempt.

e. Certification. Facilities that claim to be permitted by provisions of this rule must submit to the department a written notification as directed by the department, certifying that the facility meets the following conditions:

- (1) All spray booths and associated equipment are in compliance with the provisions of 22.8(1);
- (2) All spray booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and
- (3) All spray booths and associated equipment currently are or will be in compliance with or otherwise exempt from the NESHAP for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

22.8(2) Reserved.

567—22.9(455B) Special requirements for visibility protection.

22.9(1) to 22.9(3) Reserved.

22.9(4) Notification. For the purpose of the regional haze program under 40 CFR Section 51.308, as amended through January 10, 2017, the department shall notify in writing the owner, operator or designated representative of a source of the department's determination that the source may cause or contribute to visibility impairment in any mandatory Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(5) Analysis. The owner, operator, or designated representative of a source notified pursuant to 22.9(4) shall prepare and submit an analysis to the department after receipt of written notification by the department that an analysis is required.

22.9(6) Control technology implementation. Following the department's review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source notified pursuant to 22.9(4) shall:

- a.* Submit all necessary permit applications to achieve the emissions requirements established

following the completion of analysis performed in accordance with 22.9(5).

b. Install, operate, and maintain the control technology as required by permits issued by the department.

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in 22.10(1). This rule does not apply to equipment located at grain processing plants or grain storage elevators, as “grain processing” and “grain storage elevator” are defined in 567—22.1(455B). Compliance with the requirements of this rule does not alleviate any affected person’s duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)“*ooo*”), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

22.10(1) Definitions. For purposes of 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“*Country grain elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Country grain terminal elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent

storage capacity” is defined in this subrule;

3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Feed mill equipment*,” for purposes of 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“*Grain*,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“*Grain processing*” means the same as defined in 567—22.1(455B).

“*Grain storage elevator*” means the same as defined in 567—22.1(455B).

“*Grain terminal elevator*,” for purposes of 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of more than 88,100 m³ (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;

3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;

4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Permanent storage capacity*” means grain storage capacity that is inside a building, bin, or silo.

22.10(2) *Methods for determining potential to emit (PTE).* The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the PTE for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

a. *Country grain elevators.* The owner or operator of a country grain elevator shall calculate the PTE for PM and PM10 as specified in the definition of “potential to emit” in 567—22.1(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM10 if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM10 if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. *Country grain terminal elevators.* The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM10 as specified in the definition of “potential to emit” in 567—22.1(455B).

c. *Grain terminal elevators.* For purposes of the permitting and other requirements specified in 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM10 as specified in the definition of “potential to emit” in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in 567—24.100(455B), in the PTE calculation.

d. *Feed mill equipment.* The owner or operator of feed mill equipment, as “feed mill equipment” is defined in 22.10(1), shall calculate the PTE for PM and PM10 for the feed mill equipment as specified in the definition of “potential to emit” in 567—22.1(455B). For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, or for determining whether the stationary source

is subject to the operating permit requirements set forth in 567—24.100(455B) through 567—24.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) *Classification and requirements for permits, emissions controls, recordkeeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, recordkeeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM10 per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A “new” Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM10 per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in 22.10(3)“a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM10 on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including

restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM10 calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to 22.10(3)“a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement BMP for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department’s Internet website). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Recordkeeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM10 emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM10 emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility’s operations or increase the facility’s permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall

reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM10 will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM10 such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM10 per year and is less than or equal to 50 tons of PM10 per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM10 prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM10 calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) BMP. The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Recordkeeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM₁₀ emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of

a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM10 will occur. If the proposed change will increase the facility's PTE for PM10 such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM10 at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM10 per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM₁₀ at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM₁₀ per year, as PTE is specified in 22.10(2). For purposes of this paragraph, an “existing” Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by 22.1(1), from the department

prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM10 at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Recordkeeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM10 emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM10 is equal to or greater than 100 tons per year as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM10 is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in 567—22.106(455B).

22.10(4) Feed mill equipment. This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as “feed mill equipment” is defined in 22.10(1). For purposes of this subrule, the owner or operator of “existing” feed mill equipment shall

have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of “new” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of “existing” feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of “new” feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in 22.10(2), to determine if operating permit requirements specified in 567—24.100(455B) through 567—24.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in 567—24.100(455B) through 567—24.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the PSD requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM10 for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

567—22.11(455B) Ambient air quality standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 CFR Part 50 (1972) and as amended at 38 Federal Register (FR) 22384 (September 14, 1973), 43 FR 46258 (October 5, 1978), 44 FR 8202,

8220 (February 9, 1979), 52 FR 24634-24669 (July 1, 1987), 62 FR 38651-38760, 38855-38896 (July 18, 1997), 71 FR 61144-61233 (October 17, 2006), 73 FR 16436-16514 (March 27, 2008), 73 FR 66964-67062 (November 12, 2008), 75 FR 6474-6537 (February 9, 2010), 75 FR 35520-35603 (June 22, 2010), 78 FR 3086-3287 (January 15, 2013), and 80 FR 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.

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***18. Chapter 23, “Air Emission Standards” – Final Rule**

The Commission is requested to approve the Final Rule to rescind Chapter 23, “Emission Standards for Contaminants,” and replace it with a new Chapter 23, “Air Emission Standards.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 23 includes updated provisions for air emission standards, as well as several air quality definitions from Chapter 20. The rules continue to provide general emission rates for criteria pollutants, such as particulate matter and sulfur dioxide, established to implement the National Ambient Air Quality Standards (NAAQS). The new Chapter 23 also includes an improved and efficient table format for adoption by reference of federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).

The streamlined rules help to protect air quality for Iowa’s citizens by ensuring that regulated Iowa facilities are meeting the NAAQS, NSPS, and NESHAP. Chapter 23 will also provide businesses and the public with clear, current, and consolidated air emissions requirements.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7215C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. One minor change has been made to the Final rule from the NOIA. Rule 23.2’s definition of “backyard burning,” previously in Chapter 20, was inadvertently omitted. The definition, which is identical to the definition previously in Chapter 20, has been added back to the Final rule.

Effective Date of Final Rule: June 19, 2024

Christine Paulson, Environment Specialist Senior
Air Quality Bureau, Program Development and Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 23 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 23, “Emission Standards for Contaminants,” and adopts a new Chapter 23, “Air Emission Standards,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 23. The new Chapter 23 includes the revised provisions for air emission standards, as well as several air quality definitions previously set forth in Chapter 20, “Scope of Title—Definitions.”

After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that new Chapter 23 should include an improved and streamlined format for adoption by reference of federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). New Chapter 23 continues to provide the general emissions rates for criteria pollutants, such as particulate matter and sulfur dioxide, established to implement the National Ambient Air Quality Standards (NAAQS). Additionally, the Department concluded that the definitions in Chapter 20 would be more appropriately placed in subject matter chapters, such as new Chapter 23. An Adopted and Filed rulemaking to rescind Chapter 20 is being filed concurrently with this rulemaking.

New Chapter 23 helps to protect air quality for Iowa’s citizens by ensuring that regulated Iowa facilities

are meeting the NAAQS, NSPS, and NESHAP. New Chapter 23 also provides businesses and the public with clear, current, and consolidated air emissions requirements.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7215C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearing. No oral or written public comments were received.

The adopted amendments are identical to those proposed in the Notice of Intended Action, with the exception of a minor correction to rule 23.2. The definition of “backyard burning” previously in Chapter 20 was inadvertently omitted from rule 23.2, which includes the definitions relevant to open burning. The definition, which is identical to the definition previously in Chapter 20, has been added to the adopted rule.

Adoption of Rule Making

This rule making was adopted by the Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking

by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23

AIR EMISSION STANDARDS

567—23.1(455B) Emission standards.

23.1(1) *In general.* The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

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 June 28, 2023, 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 provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. 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.

**Federal New Source Performance Standards (NSPS)
Adopted by Reference in 23.1(2)**

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
a	Fossil fuel-fired steam generators	D	1/20/2011
b	Incinerators	E	N/A
c	Portland cement plants	F	N/A
d	Nitric acid plants	G	N/A
e	Sulfuric acid plants	H	N/A
f	Hot mix asphalt plants	I	N/A
g	Petroleum refineries	J - Ja	Not adopted. No facilities in Iowa. Paragraph reserved.
h	Secondary lead smelters	L	Not adopted. No facilities in Iowa. Paragraph reserved.
i	Secondary brass and bronze ingot production plants	M	N/A
j	Iron and steel plants	N	N/A
k	Sewage treatment plants	O and Subpart E of 40 CFR 503	N/A
l	Steel plants	AA	N/A
m	Primary copper smelters	P	Not adopted. No facilities in Iowa. Paragraph reserved.
n	Primary zinc smelters	Q	Not adopted. No facilities in Iowa. Paragraph reserved.
o	Primary lead smelters	R	Not adopted. No facilities in Iowa. Paragraph reserved.
p	Primary aluminum reduction plants	S	Not adopted. No facilities in Iowa. Paragraph reserved.
q	Wet process phosphoric acid plants in the phosphate fertilizer industry	T	N/A
r	Superphosphoric acid plants in the phosphate fertilizer industry	U	N/A
s	Diammonium phosphate plants in the phosphate fertilizer industry	V	N/A
t	Triple super phosphate plants in the phosphate fertilizer	W	N/A

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
	industry		
u	Granular triple superphosphate storage facilities in the phosphate fertilizer industry	X	N/A
v	Coal preparation plants	Y	N/A
w	Ferroalloy production	Z	N/A
x	Kraft pulp mills	BB	February 27, 2014
y	Lime manufacturing plants	HH	N/A
z	Electric utility steam generating units	Da	January 20, 2011
aa	Stationary gas turbines	GG	N/A
bb	Petroleum storage vessels	K	N/A
cc	Petroleum storage vessels	Ka	N/A
dd	Glass manufacturing plants	CC	N/A
ee	Automobile and light-duty truck surface coating operations at assembly plants	MM	N/A
ff	Ammonium sulfate manufacture	PP	N/A
gg	Surface coating of metal furniture	EE	N/A
hh	Lead-acid battery manufacturing plants	KK	February 27, 2014
ii	Phosphate rock plants	NN	N/A
jj	Graphic arts industry	QQ	N/A
kk	Industrial surface coating	SS	N/A
ll	Metal coil surface coating	TT	N/A
mm	Asphalt processing and asphalt roofing manufacturing	UU	N/A
nn	Equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry	VV and VVa	N/A
oo	Beverage can surface coating	WW	N/A
pp	Bulk gasoline terminals	XX	N/A
qq	Pressure sensitive tape and label surface coating	RR	N/A

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
	operations		
rr	Metallic mineral processing plants	LL	N/A
ss	Synthetic fiber production facilities	HHH	N/A
tt	Equipment leaks of VOC in petroleum refineries	GGG	N/A
uu	Flexible vinyl and urethane coating and printing	FFF	N/A
vv	Petroleum dry cleaners	JJJ	N/A
ww	Electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983	AAa	N/A
xx	Wool fiberglass insulation manufacturing plants	PPP	N/A
yy	Iron and steel plants	Na	N/A
zz	Equipment leaks of VOC from on-shore natural gas processing plants	KKK	N/A
aaa	On-shore natural gas processing: SO ₂ emissions	LLL	N/A
bbb	Nonmetallic mineral processing plants	OOO	N/A
ccc	Industrial-commercial-institutional steam generating units	Db	January 20, 2011
ddd	Volatile organic liquid storage vessels	Kb	N/A
eee	Rubber tire manufacturing plants	BBB	N/A
fff	Industrial surface coating: surface coating of plastic parts for business machines	TTT and TTTa	N/A
ggg	VOC emissions from petroleum refinery wastewater systems	QQQ	N/A
hhh	Magnetic tape coating facilities	SSS	N/A
iii	Polymeric coating of supporting substrates	VVV	N/A

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
jjj	VOC emissions from synthetic organic chemical manufacturing industry air oxidation unit processes	III	N/A
kkk	VOC emissions from synthetic organic chemical manufacturing industry distillation operations	NNN	N/A
lll	Small industrial-commercial-institutional steam generating units	Dc	January 20, 2011
mmm	VOC emissions from the polymer manufacturing industry	DDD	N/A
nnn	Municipal waste combustors	Ea	N/A
ooo	Grain elevators	DD	N/A
ppp	Mineral processing plants	UUU	N/A
qqq	VOC emissions from synthetic organic chemical manufacturing industry reactor processes	RRR	N/A
rrr	Municipal solid waste landfills, as defined by 40 CFR 60.751	WWW	April 10, 2000
sss	Municipal waste combustors	Eb	N/A
ttt	Hospital/medical/infectious waste incinerators (HMIWI)	Ec (partial adoption)*	N/A
uuu	New small municipal waste combustion units	AAAA	N/A
vvv	Commercial and industrial solid waste incineration	CCCC	December 1, 2000
www	Other solid waste incineration (OSWI) units	EEEE	N/A
xxx	Reserved	N/A	N/A
yyy	Stationary compression ignition internal combustion engines	III	N/A
zzz	Stationary spark ignition internal combustion engines	JJJ	N/A
aaaa	Stationary combustion turbines	KKKK	N/A
bbbb	Nitric acid plants	Ga	N/A

23.1(2) paragraph	Affected source category	40 CFR Part 60 Subpart	Date of adoption (if different than 23.1(2) introductory paragraph) or note if federal standard is not adopted
cccc	Sewage sludge incineration units	LLLL	N/A

*The provisions in 60.50c(a) through (h) (exceptions to Subpart Ec requirements) and 60.51(c) (Subpart Ec definitions) are adopted by reference. No other provisions of Subpart Ec are adopted.

23.1(3) Emission standards for hazardous air pollutants. The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through October 7, 2020, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

**Federal Emission Standards for Hazardous Air Pollutants (NESHAP)
Adopted by Reference in 23.1(3)**

23.1(3) paragraph	Affected source category	40 CFR Part 61 Subpart Adopted	Date of adoption (if different than 23.1(3) introductory paragraph) or note if standard is not adopted
a	Asbestos	M	N/A
b	Beryllium	C	Not adopted. No facilities in Iowa. Paragraph reserved.
c	Beryllium rocket motor firing	D	Not adopted. No facilities in Iowa. Paragraph reserved.
d	Mercury	E	N/A
e	Vinyl chloride	F	N/A
f	Equipment leaks of benzene (fugitive emission sources)	J	N/A
g	Equipment leaks of volatile hazardous air pollutants (fugitive emission sources)	V	N/A

23.1(3) paragraph	Affected source category	40 CFR Part 61 Subpart Adopted	Date of adoption (if different than 23.1(3) introductory paragraph) or note if standard is not adopted
h	Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities	P	Not adopted. No facilities in Iowa. Paragraph reserved.
i	Inorganic arsenic emissions from glass manufacturing plants	N	N/A
j	Inorganic arsenic emissions from primary copper smelters	O	Not adopted. No facilities in Iowa. Paragraph reserved.
k	Benzene emissions from coke by-product recovery plants	L	N/A
l	Benzene emissions from benzene storage vessels	Y	N/A
m	Benzene emissions from benzene transfer operations	BB	N/A
n	Benzene waste operations	FF	N/A

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 March 29, 2023, are adopted by reference, except those provisions that cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is provided in the table below. A different date for adoption by reference may be included with the subpart designation in the table. 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), 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 purpose of this subrule and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this subrule.

“*Hazardous air pollutant*” or “*HAP*” means the same as “hazardous air pollutant” set forth in 567—24.100(455B).

“*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. “Area source” means any stationary source of hazardous air pollutants that is not a “major source.”

“*Maximum achievable control technology (MACT) emission limitation for existing sources,*” as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

“*Maximum achievable control technology (MACT) emission limitation for new sources,*” as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

“*Maximum achievable control technology (MACT) floor,*” as this definition is set forth in 40 CFR Subpart B, section 63.51, is adopted by reference.

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 in the table below.

**Federal Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories
Adopted by Reference in 23.1(4)**

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
a	General provisions	A	N/A
b	Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j)	B	N/A
c	Reserved	N/A	N/A
d	Compliance extensions for early reductions of hazardous air pollutants	D	N/A
e	Reserved	N/A	N/A
f	Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry	F	N/A
g	Emission standards for	G	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater		
h	Emission standards for organic hazardous air pollutants for equipment leaks	H	N/A
i	Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks	I	N/A
j	Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production	Subparts J and HHHHHH H	Not adopted. No facilities in Iowa. Paragraph reserved.
k	Reserved	N/A	N/A
l	Emission standards for coke oven batteries	L	N/A
m	Perchloroethylene air emission standards for dry cleaning facilities	M	N/A
n	Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks	N	N/A
o	Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations	O	N/A
p	Reserved	N/A	N/A
q	Emission standards for hazardous air pollutants for industrial process cooling towers	Q	N/A
r	Emission standards for hazardous air pollutants for gasoline distribution: (Stage 1)	R	N/A
s	Emission standards for	S	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	hazardous air pollutants for pulp and paper (noncombustion)		
t	Emission standards for hazardous air pollutants: halogenated solvent cleaning	T	N/A
u	Emission standards for hazardous air pollutants: Group I polymers and resins	U	N/A
v	Reserved	N/A	N/A
w	Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production	W	N/A
x	National emission standards for hazardous air pollutants from secondary lead smelting	X	Not adopted. No facilities in Iowa. Paragraph reserved.
y	Emission standards for marine tank vessel loading operations	Y	N/A
z	Reserved	N/A	N/A
aa	Emission standards for hazardous air pollutants for phosphoric acid manufacturing	AA	N/A
ab	Emission standards for hazardous air pollutants for phosphate fertilizers production	BB	N/A
ac	National emission standards for hazardous air pollutants: petroleum refineries	CC	Not adopted. No facilities in Iowa. Paragraph reserved.
ad	Emission standards for hazardous air pollutants for off-site waste and recovery operations	DD	N/A
ae	Emission standards for magnetic tape manufacturing operations	EE	N/A
af	Reserved	N/A	N/A
ag	National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and	GG	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	rework facilities		
ah	Emission standards for hazardous air pollutants for oil and natural gas production	HH	N/A
ai	Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations	II	Not adopted. No facilities in Iowa. Paragraph reserved.
aj	Emission standards for hazardous air pollutants for HAP emissions from wood furniture manufacturing operations	JJ	N/A
ak	Emission standards for hazardous air pollutants for the printing and publishing industry	KK	N/A
al	Emission standards for hazardous air pollutants for primary aluminum reduction plants	LL	Not adopted. No facilities in Iowa. Paragraph reserved.
am	Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills	MM	October 11, 2017
an	Reserved	N/A	N/A
ao	Emission standards for tanks—level 1	OO	N/A
ap	Emission standards for containers	PP	N/A
aq	Emission standards for surface impoundments	QQ	N/A
ar	Emission standards for individual drain systems	RR	N/A
as	Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process	SS	N/A
at	Emission standards for equipment leaks—control level 1	TT	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
au	Emission standards for equipment leaks—control level 2 standards	UU	N/A
av	Emission standards for oil-water separators and organic-water separators	VV	N/A
aw	Emission standards for storage vessels (tanks)—control level 2	WW	N/A
ax	Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations	XX	N/A
ay	Emission standards for hazardous air pollutants: generic maximum achievable control technology (generic MACT)	YY	October 8, 2014
az to bb	Reserved	N/A	N/A
bc	Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants	CCC	Not adopted. No facilities in Iowa. Paragraph reserved.
bd	Emission standards for hazardous air pollutants for mineral wool production	DDD	N/A
be	Emission standards for hazardous air pollutants from hazardous waste combustors	EEE	N/A
bf	Reserved	N/A	N/A
bg	Emission standards for hazardous air pollutants for pharmaceutical manufacturing	GGG	N/A
bh	Emission standards for hazardous air pollutants for natural gas transmission and storage	HHH	N/A
bi	Emission standards for hazardous air pollutants for flexible polyurethane foam production	III	N/A
bj	Emission standards for hazardous air pollutants: Group IV polymers and resins	JJJ	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
bk	Reserved	N/A	N/A
bl	Emission standards for hazardous air pollutants for Portland cement manufacturing operations	LLL	N/A
bm	Emission standards for hazardous air pollutants for pesticide active ingredient production	MMM	N/A
bn	Emission standards for hazardous air pollutants for wool fiberglass manufacturing	NNN	N/A
bo	Emission standards for hazardous air pollutants for amino/phenolic resins production	OOO	N/A
bp	Emission standards for hazardous air pollutants for polyether polyols production	PPP	N/A
bq	Emission standards for hazardous air pollutants for primary copper smelting	QQQ	Not adopted. No facilities in Iowa. Paragraph reserved.
br	Emission standards for hazardous air pollutants for secondary aluminum production	RRR	N/A
bs	Reserved	N/A	N/A
bt	Emission standards for hazardous air pollutants for primary lead smelting	TTT	Not adopted. No facilities in Iowa. Paragraph reserved.
bu	Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units	UUU	Not adopted. No facilities in Iowa. Paragraph reserved.
bv	Emission standards for hazardous air pollutants: publicly owned treatment works (POTW)	VVV	N/A
bw	Reserved	N/A	N/A
bx	Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and	XXX	Not adopted. No facilities in Iowa. Paragraph reserved.

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	silicomanganese		
by and bz	Reserved	N/A	N/A
ca	Emission standards for hazardous air pollutants: municipal solid waste landfills	AAAA	April 20, 2006
cb	Reserved	N/A	N/A
cc	Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast	CCCC	N/A
cd	Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing)	DDDD	October 29, 2007
ce	Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline)	EEEE	July 17, 2008
cf	Emission standards for hazardous air pollutants for miscellaneous organic chemical (MON) manufacturing	FFFF	July 14, 2006
cg	Emission standards for hazardous air pollutants for solvent extraction for vegetable oil production	GGGG	N/A
ch	Emission standards for hazardous air pollutants for wet-formed fiberglass mat production	HHHH	N/A
ci	Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks	IIII	N/A
cj	Emission standards for hazardous air pollutants: paper and other web coating	JJJJ	N/A
ck	Emission standards for hazardous air pollutants for surface coating of metal cans	KKKK	N/A
cl	Reserved	N/A	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
cm	Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products	MMMM	N/A
cn	Emission standards for hazardous air pollutants: surface coating of large appliances	NNNN	N/A
co	Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles	OOOO	N/A
cp	Emission standards for surface coating of plastic parts and products	PPPP	N/A
cq	Emission standards for hazardous air pollutants for surface coating of wood building products	QQQQ	N/A
cr	Emission standards for hazardous air pollutants: surface coating of metal furniture	RRRR	N/A
cs	Emission standards for hazardous air pollutants: surface coating of metal coil	SSSS	N/A
ct	Emission standards for hazardous air pollutants for leather finishing operations	TTTT	N/A
cu	Emission standards for hazardous air pollutants for cellulose products manufacturing	UUUU	N/A
cv	Emission standards for hazardous air pollutants for boat manufacturing	VVVV	N/A
cw	Emission standards for hazardous air pollutants: reinforced plastic composites production	WWWW	N/A
cx	Emission standards for hazardous air pollutants: rubber tire manufacturing	XXXX	N/A
cy	Emission standards for hazardous air pollutants for	YYYY	November 19, 2020

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	stationary combustion turbines		
cz	Emission standards for stationary reciprocating internal combustion engines	ZZZZ	N/A
da	Emission standards for hazardous air pollutants for lime manufacturing plants	AAAAA	April 20, 2006
db	Emission standards for hazardous air pollutants: semiconductor manufacturing	BBBBB	N/A
dc	Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks	CCCCC	N/A
dd	Emission standards for industrial, commercial and institutional boilers and process heaters	DDDDD	Not adopted. Paragraph reserved.
de	Emission standards for hazardous air pollutants for iron and steel foundries	EEEEE	N/A
df	Emission standards for hazardous air pollutants for integrated iron and steel manufacturing	FFFFF	July 13, 2006
dg	Emission standards for hazardous air pollutants: site remediation	GGGGG	November 29, 2006
dh	Emission standards for hazardous air pollutants for miscellaneous coating manufacturing	HHHHH	N/A
di	Emission standards for mercury emissions from mercury cell chlor-alkali plants	IIIII	N/A
dj	Emission standards for hazardous air pollutants for brick and structural clay products manufacturing	JJJJJ	Not adopted. No facilities in Iowa. Paragraph reserved.
dk	Emission standards for hazardous air pollutants for clay ceramics manufacturing	KKKKK	Not adopted. No facilities in Iowa. Paragraph reserved.
dl	Emission standards for	LLLLL	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	hazardous air pollutants: asphalt processing and asphalt roofing manufacturing		
dm	Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations	MMMMM	N/A
dn	Emission standards for hazardous air pollutants: hydrochloric acid production	NNNNN	N/A
do	Reserved	N/A	N/A
dp	Emission standards for hazardous air pollutants: engine test cells/stands	PPPPP	N/A
dq	Emission standards for hazardous air pollutants for friction materials manufacturing facilities	QQQQQ	N/A
dr	Emission standards for hazardous air pollutants: taconite iron ore processing	RRRRR	Not adopted. No facilities in Iowa. Paragraph reserved.
ds	Emission standards for hazardous air pollutants for refractory products manufacturing	SSSSS	N/A
dt	Emission standards for hazardous air pollutants: primary magnesium refining	TTTTT	Not adopted. No facilities in Iowa. Paragraph reserved.
du and dv	Reserved	N/A	N/A
dw	Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources	WWWWW	N/A
dx	Reserved	N/A	N/A
dy	Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources	YYYYY	N/A
dz	Emission standards for hazardous air pollutants for iron and steel foundry area sources	ZZZZZ	N/A
ea	Reserved	N/A	N/A
eb	Emission standards for	BBBBBB	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
	hazardous air pollutants for gasoline distribution area sources: bulk terminals, bulk plants and pipeline facilities		
ec	Emission standards for hazardous air pollutants for area sources: gasoline dispensing facilities	CCCCCC	N/A
ed to eg	Reserved	N/A	N/A
eh	Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations	HHHHHH	N/A
ei	Reserved	N/A	N/A
ej	Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers	JJJJJJ	N/A
ek	Reserved	N/A	N/A
el	Emission standards for hazardous air pollutants for acrylic and modacrylic fibers production area sources	LLLLLL	N/A
em	Emission standards for hazardous air pollutants for carbon black production area sources	MMMMM M	N/A
en	Emission standards for hazardous air pollutants for chemical manufacturing of chromium compounds area sources	NNNNNN	N/A
eo	Emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources	OOOOOO	N/A
ep	Emission standards for hazardous air pollutants for lead acid battery manufacturing area sources	PPPPPP	November 19, 2020
eq	Emission standards for hazardous air pollutants for wood preserving area sources	QQQQQQ	N/A

23.1(4) paragraph	Affected source category	40 CFR Part 63 Subpart Adopted	Date of adoption (if different than 23.1(4) introductory paragraph) or note if standard is not adopted
er	Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources	RRRRRR	N/A
es	Emission standards for hazardous air pollutants for glass manufacturing area sources	SSSSSS	N/A
et	Emissions standards for hazardous air pollutants for secondary nonferrous metals processing area sources	TTTTTT	N/A
eu	Reserved	N/A	N/A
ev	Emission standards for hazardous air pollutants for area sources	VVVVVV	N/A
ew	Emission standards for hazardous air pollutants for area sources: plating and polishing	WWWWW W	N/A
ex	Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing	XXXXXX	N/A
ey	Reserved	N/A	N/A
ez	Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries	ZZZZZZ	N/A
fa	Reserved	N/A	N/A
fb	National emission standards for hazardous air pollutants for area sources: chemical preparations industry	BBBBBBB	N/A
fc	Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing	CCCCCCC	N/A
fd	Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing	DDDDDD D	N/A

23.1(5) Emission guidelines. The emission guidelines and compliance times for existing sources, as

defined in 40 Code of Federal Regulations Part 60 as amended through March 21, 2011, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different CFR reference and date for adoption by reference may be included with the subpart designation indicated in the paragraphs of this subrule. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. 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, as adopted by reference in 23.1(2), also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) Definitions. For the purpose of 23.1(5) “a,” the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

“*Municipal solid waste landfill*” or “*MSW landfill*” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.
2. Physical or operational changes made to an existing MSW landfill solely to comply with

an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to 567—24.101(455B) only because of applicability to 23.1(5)“a”(2), the following apply for obtaining and maintaining a Title V operating permit under 567—24.104(455B):

- The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.
- The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 24.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the air quality bureau, department of natural resources, no later than September 20, 1999.
- The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under 23.1(5)“a”(3), or the owner or operator meets the conditions for control system removal specified in 40 CFR §60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill’s design capacity exceeds the established thresholds in 23.1(5)“a”(3)“1,” the NMOC

emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5)“a”(3)“1.”

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the director and U.S. Environmental Protection Agency:

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)“a”(3)“3”;

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and recordkeeping requirements. The recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)“a”(6)“2,” planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)“a”(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5)“a”(3)“1” whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems

capable of meeting emission guidelines in 23.1(5)“a”(3) shall be accomplished within 30 months of the date when the condition in 23.1(5)“a”(3)“1” is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. *Emission guidelines for hospital/medical/infectious waste incinerators (40 CFR Part 62, Subpart HHH).* The provisions in 62.14400(b) (exceptions to Subpart HHH requirements) and 62.14490 (Subpart HHH definitions) as amended through May 13, 2013, are adopted by reference. No other provisions of Subpart HHH are adopted.

c. *Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999.* Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with requirements established in Subpart III of 40 CFR Part 62 and 40 CFR §62.3916 as adopted through August 24, 2004.

d. Reserved.

e. *Emission guidelines and compliance times for existing sewage sludge incineration units (40 CFR Part 62, Subpart LLL).* Emission guidelines and compliance times for control of designated pollutants from affected sewage sludge incineration (SSI) units that commenced construction or reconstruction on or before October 14, 2010, shall be in accordance with federal standards established in Subpart LLL of 40 CFR Part 62 as amended through April 29, 2016.

23.1(6) *Calculation of emission limitations based upon stack height.* This rule sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. The rule does not limit the actual physical stack height for any source.

For the purpose of this subrule, definitions of “stack,” “a stack in existence,” “dispersion technique,” “good engineering practice (GEP) stack height,” “nearby” and “excessive concentration” as set forth in 40 CFR §51.100(ff) through (kk) as amended through June 14, 1996, are adopted by reference.

567—23.2(455B) Open burning. For the purpose of these rules and the rules in 567—Chapters 20 through 35, the following terms shall, unless otherwise noted, have the meaning indicated in this rule. The definitions set out in Iowa Code sections 455B.101, 455B.131, and 455B.411 are incorporated verbatim in these rules.

“*Backyard burning*” means the disposal of residential waste by open burning on the premises of the property where such waste is generated.

“*Garbage*” means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food but excluding recognized industrial by-products.

“*Landscape waste*” means any vegetable or plant wastes except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings.

“*Open burning*” means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.

“*Refuse*” means garbage, rubbish and all other putrescible and nonputrescible wastes, except sewage and water-carried trade wastes.

“*Residential waste*” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes, and any locally recyclable goods or plastics.

“*Rubbish*” means all waste materials of nonputrescible nature.

“*Trade waste*” means any refuse resulting from the prosecution of any trade, business, industry, commercial venture (including farming and ranching), or utility or service activity, and any governmental or institutional activity, whether or not for profit.

23.2(1) Prohibition. No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).

23.2(2) Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance

from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

23.2(3) Exemptions. The open burning exemptions specified in this subrule do not provide exemptions from any other applicable environmental regulations. In particular, the exemptions contained in this subrule do not absolve any person from compliance with the rules for solid waste disposal, including ash disposal, and solid waste permitting contained in 567—Chapters 100 through 130 or the rules for storm water runoff and storm water permitting contained in 567—Chapters 60 and 64. The following exemptions apply unless prohibited by local ordinances or regulations, except that the exemptions for open burning of trees and tree trimming (23.2(3) “b”), landscape waste (23.2(3) “d”), residential waste (23.2(3) “f”), agricultural structures (23.2(3) “i”), and demolished buildings (23.2(3) “j”) are unavailable within the cities of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

a. Disaster rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants.

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning

operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

c. Flare stacks. The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2) “d” and 23.3(3) “e.”

d. Landscape waste. The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

e. Recreational fires. Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2) “d.” Burning rubber tires is prohibited from this activity.

f. Residential waste. Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

g. Training fires. For purposes of 23.2(3), a “training fire” is a fire set for the purposes of conducting bona fide training of public or industrial employees in firefighting methods. For purposes of this paragraph, “bona fide training” means training that is conducted according to the National Fire Protection Association 1403 Standard on Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

- (1) A training fire on a building is conducted with the building structurally intact.

(2) The training fire does not include the controlled burn of a demolished building.

(3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.

(4) Notification shall be made in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) as amended through January 16, 1991.

(5) All asbestos-containing materials shall be removed prior to the training fire.

(6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department's limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3) "j."

(7) Rubber tires shall not be burned during a training fire.

h. Paper or plastic pesticide containers and seed corn bags. The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day's accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion

products.

i. Agricultural structures. The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt roofing are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation.”

For the purposes of this subrule, “agricultural structures” means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. “Agricultural structures,” for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes.

j. Controlled burning of a demolished building. A city, as “city” is defined in Iowa Code section 362.2(4), with approval of its council, as “council” is defined in Iowa Code section 362.2(8), may conduct a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) Prohibition. The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) Notification requirements. For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10

working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify nearby residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building. For burns conducted outside the city limits, the city shall send to the chairperson of the applicable county board a copy of the completed DNR notification Form 542-8010 and documentation of city council approval. Notification to the county board shall be postmarked, faxed or sent by email at least 30 days before the proposed controlled burn commences.

(3) Asbestos removal requirements. All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos NESHAP, as amended through January 16, 1991.

(4) Requirements for asphalt roofing. During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city’s limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in 23.2(3) “g.”

(5) Building size limit. For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1,700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1,700 square feet in size. For purposes of this subparagraph, “square feet” includes both finished and unfinished basements and

excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) Time of day requirements. The controlled burning of a demolished building may be conducted only between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) Prohibited materials. Rubber tires, chemicals, furniture, carpeting, household appliances, vinyl products (such as flooring or siding), trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) Limits on the number and location of burns. For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as “person” is defined in Iowa Code section 362.2(17).

(9) Requirements for burn access and supervision. The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) Recordkeeping requirements. The city shall retain at least one copy of all notifications and supplementary information required to be sent to the department under 23.2(3) “j”(2). Additionally, the city shall maintain a map of the exact location of each burn site and supporting documentation showing the date of each demolished building burn and the square feet of building material burned on each date. All maps, notifications and associated records shall be maintained by the city clerk, as “clerk” is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) Variance from this paragraph. In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny

the request in accordance with 567—subrule 21.2(4).

(12) Compliance with other applicable environmental regulations. Compliance with the exemption requirements in this paragraph shall not absolve a city of the responsibility to comply with any other applicable environmental regulations. In particular, a city conducting a controlled burn of a demolished building shall comply with all applicable solid waste disposal, including ash disposal, and solid waste permitting rules contained in 567—Chapters 100 through 130, as well as all applicable storm water discharge and storm water permitting rules contained in 567—Chapters 60 and 64.

567—23.3(455B) Specific contaminants.

23.3(1) General. The emission standards contained in this rule shall apply to each source operation unless performance standard for the process is specified in 23.1(2) through 23.1(5), in which case the performance standard shall apply.

23.3(2) Particulate matter. No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 21.

a. General emission rate.

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from the equations below, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas.

The process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation:

$$E=4.10 \times P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation:

$$E=55.0 \times P^{0.11}-40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

b. *Combustion for indirect heating.* Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated from equation (15) in that standard, with $C_{max} = 50$ micrograms per cubic meter. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2) "a" shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.

(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and

which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA-approved single source dispersion model using allowable emission rates and five-year worst-case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under 23.3(2) "b," whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input, the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input, and the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu heat input. All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

c. Fugitive dust.

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above

exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions that require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.
2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.
3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.
4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.
5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.
6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) Nonattainment areas. 23.3(2)“c”(1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. “Traditional source” means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2)“a,” 23.3(2)“b” or 567—23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2)“a,” 23.3(2)“b” or 567—23.4(455B) but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see

“Identification of Techniques for the Control of Industrial Fugitive Dust Emissions,” as adopted by the commission on May 19, 1981, which is available from the department upon request.

(3) Redesignated areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of 23.3(2)“c”(2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 21.

(1) Residential heating equipment. Residential heating equipment serving dwellings of four family units or less is exempt.

(2) Gasoline-powered vehicles. No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) Diesel-powered vehicles. No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity for longer than five consecutive seconds.

(4) Diesel-powered locomotives. No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) Startup and testing. Initial start and warmup of a cold engine; the testing of an engine for trouble, diagnosis or repair; or engine research and development activities, is exempt.

(6) Uncombined water. The provisions of this paragraph shall apply to any emission that would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) Sulfur compounds. The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Louisa, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in 23.3(3)“a”(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit that has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess

of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

567—23.4(455B) Specific processes.

23.4(1) General. The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2)“a” and 23.3(2)“b” shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this rule is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 567—23.3(455B) may be required in such instance.

23.4(2) Asphalt batching plants. No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

23.4(3) Cement kilns. Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(4) Cupolas for metallurgical melting. The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in 23.3(2)“a,” except as provided in 567—Chapter 21.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from the table below, except as provided in 567—Chapter 21.

ALLOWABLE EMISSIONS FROM
EXISTING SMALL FOUNDRY CUPOLAS

Process weight rate (lb/hr)	Allowable emission (lb/hr)
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.58
6,000	11.30
7,000	12.90
8,000	14.30
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

23.4(5) *Electric furnaces for metallurgical melting.* The emissions of particulate matter to the atmosphere from electric furnaces used for metallurgical melting shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(6) *Sand handling and surface finishing operations in metal processing.* This subrule shall apply to any new foundry or metal processing operation not properly termed a combustion, melting, baking or pouring operation. For purposes of this subrule, a new process is any process that has not started operation, or the construction of which has not been commenced, or the components of which have not been ordered or contracts for the construction of which have not been let on August 1, 1977. No person shall allow, cause or permit the operation of any equipment designed for sand shakeout, mulling, molding, cleaning, preparation, reclamation or rejuvenation or any equipment for abrasive cleaning, shot blasting, grinding, cutting, sawing or buffing in such a manner that particulate matter discharged from any stack exceeds 0.05 grains per dry standard cubic foot of exhaust gas, regardless of the types and number of operations that discharge from the stack.

23.4(7) Grain handling and processing plants. The owner or operator of equipment at a permanent installation for the handling or processing of grain, grain products and grain by-products shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas, except as follows:

a. The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as “country grain elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

b. The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

c. The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

23.4(8) Lime kilns. No person shall cause, allow or permit the operation of a kiln for the processing of limestone such that the particulate matter in the gas discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(9) Meat smokehouses. No person shall cause, allow or permit the operation of a meat smokehouse or a group of meat smokehouses that consume more than 10 pounds of wood, sawdust or other material per hour such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas.

23.4(10) Phosphate processing plants.

a. and *b.* Reserved.

c. Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of

phosphorus pentoxide or equivalent input.

d. No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphoric acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphorous pentoxide or its equivalent input.

e. Notwithstanding 23.4(10)“*c*” and “*d*,” no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material, including but not limited to phosphoric acid, in a manner that emissions of fluorides exceed 100 pounds per day.

f. “Fluoride” means elemental fluorine and all fluoride compounds as measured by reference methods specified in Appendix A to 40 CFR Part 60 as amended through March 12, 1996.

g. Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

23.4(11) *Portland cement concrete batching plants.* No person shall cause, allow or permit the operation of a Portland cement concrete batching plant such that the particulate matter discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(12) *Incinerators.* A person shall not cause, allow or permit the operation of an incinerator unless provided with appropriate control of emissions of particulate matter and visible air contaminants.

a. Particulate matter. A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of 1,000 or more pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of less than 1,000 pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.35 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

b. Visible emissions. A person shall not allow, cause or permit the operation of an incinerator in a manner such that it produces visible air contaminants in excess of 40 percent opacity; except that visible air

contaminants in excess of 40 percent opacity but less than or equal to 60 percent opacity may be emitted for periods aggregating not more than 3 minutes in any 60-minute period during an operation breakdown or during the cleaning of air pollution control equipment.

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of 567—Chapter 65.

23.5(2) Criteria for approval of industrial anaerobic lagoons constructed or expanded on or after July 1, 1982.

a. Lagoons designed to treat 100,000 gallons per day (gpd) or less shall be located at least 1,250 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

b. Lagoons designed to treat more than 100,000 gpd shall be located at least 1,875 feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road.

c. The criteria in 23.5(2) shall apply except in situations in which Iowa Code section 455B.134(3) “*e*”(2) is successfully invoked.

d. Compliance with the requirements of 23.5(2) shall not constitute an exemption from compliance with any other applicable environmental regulations. In particular, compliance with these requirements shall not absolve any person from compliance with the requirements set forth in 567—Chapter 64 that are applicable to industrial anaerobic lagoons.

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

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***19. Chapter 24, “Operating Permits” – Final Rule**

The Commission is requested to approve the Final Rule to rescind Chapter 24, “Excess Emissions,” and replace it with a new Chapter 24, “Operating Permits.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: After a review consistent with EO10, the Department determined that the rules for air operating permits, which were previously provided in Chapter 22, should be revised and moved to their own chapter. The new Chapter 24 includes updated provisions for Title V Operating Permits, Acid Rain Permits, and Small Source Operating Permits. The provisions in Chapter 24 for excess emissions have been moved to new Chapter 21.

Operating permits help protect the air quality for Iowa’s citizens by ensuring that emissions equipment continues to perform as designed. The new Chapter 24 provides businesses and the public with a dedicated chapter for air operating permit rules that includes more streamlined, up-to-date requirements with increased effectiveness.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7213C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The One minor change has been made to the Final rule from the NOIA. Paragraph 24.300(2)“d” contained an inaccurate cross reference to Chapter 28, which is being rescinded; the citation should be to Chapter 22. That cross reference has been corrected in the Final rule.

Effective Date of Final Rule: June 19, 2024

Christine Paulson, Environment Specialist Senior
Air Quality Bureau, Program Development and Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 24 – Final Rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 24, “Excess Emissions” and adopts a new Chapter 24, “Operating Permits,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 24. The previous chapter established the standards for the reporting of air quality excess emissions and required equipment maintenance and repair. After a review consistent with Executive Order 10, the Department of Natural Resources (Department) determined that rules for excess emissions would be more appropriately placed in another subject matter chapter, specifically new Chapter 21. An Adopted and Filed rulemaking to rescind and adopt a new Chapter 21 that includes updated excess emissions provisions from Chapter 24 is filed concurrently with this rulemaking.

The new Chapter 24 consists of the rules for air operating permits, which are currently set forth in Chapter 22, and includes updated and streamlined provisions for Title V Operating Permits, Acid Rain Permits, and Small Source Operating Permits. These requirements are established under the U.S. Clean Air Act, Sections 501 through 507 (42 U.S.C. §7661 through §7661f) and Iowa Code section 455B.133. Operating permits help to protect air quality for Iowa’s citizens by ensuring that emissions equipment continues to perform as designed.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7213C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearing. No oral or written public comments were received.

The adopted amendments are identical to those proposed in the Notice of Intended Action, with the exception of a minor correction in paragraph 24.300(2)“d.” The cross reference to Chapter 28, which is being rescinded, has been updated to refer to Chapter 22.

Adoption of Rule Making

This rule making was adopted by the Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 24 and adopt the following **new** chapter in lieu thereof:

CHAPTER 24

OPERATING PERMITS

567—24.1 to 24.99 Reserved.

567—24.100(455B) Title V operating permits—definitions. For purposes of this chapter and unless otherwise stated, the following terms shall have the meaning indicated in this rule:

“*12-month rolling period*” means the same as defined in 567—22.1(455B).

“*40 CFR Part 70*” means Part 70 or any specific section within Part 70 that is cited in this chapter, as amended through May 6, 2020, unless otherwise noted.

“*40 CFR Part 72*” means Part 72 or any specific section within Part 72 that is cited in this chapter, as amended through March 28, 2011, unless otherwise noted.

“*Act*” means the U.S. Clean Air Act (42 U.S.C. §7401, et seq.), as amended through November 15, 1990.

“*Actual emissions*” means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that immediately precedes that date and that is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain-affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Affected source*,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“*Affected state*,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“*Affected unit*,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“*Allowable emissions*” means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

“*Allowance*,” as this definition is set forth in 40 CFR §72.2, is adopted by reference.

“*Applicable requirement*,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“*Area source*” means any stationary source of hazardous air pollutants that is not a major source as defined in 567—24.100(455B).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by Title and Part,

so that “40 CFR 51” means “Title 40 of the Code of Federal Regulations, Part 51.”

“*Country grain elevator*” means the same as defined in 567—subrule 22.10(1).

“*Designated representative*” means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in Chapter 24, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

“*Draft Title V permit*,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“*Electronic format*,” “*electronic submittal*,” and “*electronic submittal format*” mean the same as defined in 567—22.1(455B).

“*Emergency generator*” means the same as defined in 567—22.1(455B).

“*Emissions allowable under the permit*,” as this definition is set forth in 40 CFR 70.2, is adopted by reference.

“*Emissions unit*,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“*EPA conditional method*” means the same as defined in 567—22.1(455B).

“*EPA reference method*” means the same as defined in 567—22.1(455B).

“*Existing hazardous air pollutant source*” means any source as defined in 40 CFR 61 as adopted by reference in 567—subrule 23.1(3) and 40 CFR §63.72 as adopted by reference in 567—subrule 23.1(4) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

“*Facility*” means, with reference to a stationary source, any apparatus that emits or may emit any air pollutant or contaminant.

“*Federal implementation plan*” means a plan promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and that includes enforceable emission limitations or other control measures, means, or techniques and provides for attainment of

the relevant national ambient air quality standard.

“Federally enforceable” means all limitations and conditions that are enforceable by the Administrator, including but not limited to the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2), 23.1(3), and 23.1(4); the requirements of such other state rules or orders approved by the Administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

“Final Title V permit” means the version of a Title V permit issued by the department that has completed all required review procedures.

“Fugitive emissions” are those emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“Hazardous air pollutant” means any of the air pollutants listed in Section 112 of the Act and 40 CFR §63.2 as adopted by reference in 567—subrule 23.1(4).

“High-risk pollutant” means one of the hazardous air pollutants listed in Table 1 in 40 CFR §63.74 as adopted by reference in 567—subrule 23.1(4).

“Major source” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.
2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:
 - For pollutants other than radionuclides, 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, in the aggregate, 10 tpy or more of any hazardous air pollutant that has been listed pursuant to Section 112(b) of the Act

and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

- For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

- For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

- For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as “marginal” or “moderate,” 50 tpy or more in areas classified or treated as classified as “serious,” 25 tpy or more in areas classified or treated as classified as “severe” and 10 tpy or more in areas classified or treated as classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

- For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

- For carbon monoxide nonattainment areas (1) that are classified or treated as classified as “serious” and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

- For particulate matter (PM₁₀), nonattainment areas classified or treated as classified as “serious,” sources with the potential to emit 70 tpy or more of PM₁₀.

- For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such

source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

“Manually operated equipment” means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system that is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

“Maximum achievable control technology (MACT) emission limitation for existing sources” means the definition adopted by reference in 567—subrule 23.1(4).

“Maximum achievable control technology (MACT) emission limitation for new sources” means the definition adopted by reference in 567—subrule 23.1(4).

“Maximum achievable control technology (MACT) floor” means the definition adopted by reference in 567—subrule 23.1(4).

“New Title IV affected source or unit” means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

“Nonattainment area” means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

“Permit modification” means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found in 567—24.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found in 567—24.120(455B) through 567—24.146(455B). This definition of “permit modification” shall be used solely for purposes of this chapter governing Title V operating permits.

“Permit revision” means any permit modification or administrative permit amendment.

“Permitting authority” means the Iowa department of natural resources or the director thereof.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 567—subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

“Proposed Title V permit,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“Regulated air contaminant” means the same as “regulated air pollutant.”

“Regulated air pollutant” means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:
 - Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator

fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM₁₀, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

“Regulated air pollutant or contaminant (for fee calculation),” which is used only for purposes of 567—Chapter 30, means any regulated air pollutant or contaminant except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM₁₀;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act;
5. Greenhouse gas, as defined in 567—22.1(455B).

“Renewal” means the process by which a permit is reissued at the end of its term.

“Responsible official” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- The delegation of authority to such representative is approved in advance by the permitting

authority;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional Administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

- The designated representative for any other purposes under this chapter or the Act.

“Section 502(b)(10) changes,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“State implementation plan” or “SIP” means the plan adopted by the state of Iowa and approved by the Administrator that provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the Administrator, pursuant to the Act.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

“Stationary source categories” means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;
27. Any other stationary source category, that as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

“Subject to regulation,” as this definition is set forth in 40 CFR §70.2, is adopted by reference.

“Title V permit” means an operating permit under Title V of the Act.

567—24.101(455B) Applicability of Title V operating permit requirements.

24.101(1) Except as provided in 567—24.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

- a.* Any affected source subject to the provisions of Title IV of the Act;
- b.* Any major source;
- c.* Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);
- d.* Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- e.* Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;
- f.* Any source category designated by the Administrator pursuant to 40 CFR §70.3 as amended through December 19, 2005.

24.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to 24.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

24.101(3) Reserved.

567—24.102(455B) Source category exemptions.

24.102(1) All sources listed in 24.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in 24.102(3).

24.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

24.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as adopted by reference in 567—subrule 23.1(3);

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as adopted by reference in 567—subrule 23.1(4).

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as adopted by reference in 567—subrule 23.1(4).

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as adopted by reference in 567—subrule 23.1(4).

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as adopted by reference in 567—subrule 23.1(4).

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as adopted by reference in 567—subrule 23.1(4).

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as adopted by reference in 567—subrule 23.1(4).

567—24.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit emissions fees are not required from insignificant activities pursuant to 567—paragraph 30.4(2) “*f.*”

24.103(1) *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR §70.5, these activities need not be included in the Title V permit application:

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain that were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

c. Equipment or control equipment that eliminates all emissions to the atmosphere.

d. Equipment (other than anaerobic lagoons) or control equipment that emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

e. Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.

f. Residential wood heaters, cookstoves, or fireplaces.

g. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

h. Recreational fireplaces.

i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.

j. Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems that include any industrial waste are not exempt.

k. Retail gasoline- and diesel fuel-handling facilities.

l. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.

- m.* Equipment used for hydraulic or hydrostatic testing.
- n.* General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.
- o.* Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.
- p.* Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).
- q.* Administrative activities, including but not limited to paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.
- r.* Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.
- s.* Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.
- t.* Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.
- u.* Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.
- v.* Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Act.
- w.* Piping and storage systems for natural gas, propane, and liquefied petroleum gas, excluding pipeline compressor stations and associated storage facilities.
- x.* Water treatment or storage systems, as follows:

1) Systems for potable water or boiler feedwater.

(2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Act.

y. Lawn care, landscape maintenance, and groundskeeping activities.

z. Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

aa. Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

bb. Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

cc. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

dd. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3) “g” is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair, or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks, and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves, and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit, or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 567—22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair, or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

24.103(2) *Insignificant activities that must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit that has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM₁₀,

0.52 tons per year of PM_{2.5} (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—22.1(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of

construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013),

2,500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1,000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of “high-risk pollutant” is found in 567—24.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces or indirect cooling units using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in 24.103(2) “*b*”(2). Used oils meeting the specification from 40 CFR §279.11 as amended through July 14, 2006, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred on

or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in 567—22.1(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in 24.103(2) “a.”

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of 567—24.103(455B):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);
2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); or
3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

567—24.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source’s failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

24.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the

applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

24.104(2) Sources making permit revisions pursuant to 567—24.110(455B) shall not be in violation of this rule.

567—24.105(455B) Title V permit applications.

24.105(1) *Duty to apply.* For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall submit a complete and timely application in the electronic format specified by the department, if electronic submittal is provided. An owner or operator of a source required to obtain a Title V permit pursuant to 24.101(1) shall submit all required fees as required in 567—Chapter 30.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Reserved.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD, or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to 567—24.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to 567—24.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in 567—24.110(455B) shall submit to the department a written notification as specified in 567—24.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in 567—24.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in 567—24.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in 567—24.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in 567—24.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in 567—24.113(455B) shall submit to the department an application for a significant permit modification as specified in 567—24.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to 24.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

24.105(2) Standard application form and required information. To apply for a Title V permit, the standard application form shall be submitted in the electronic format specified by the department, if electronic submittal is provided.

The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by 567—30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by

24.101(1)“c” and 24.101(1)“d,” then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities that are insignificant according to the provisions of 567—24.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity.

Unless otherwise specified in 24.128(4), nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source’s processes and products (by two-digit Standard Industrial Classification Code), including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department:

(1) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(2) Identification and description of air pollution control equipment.

(3) Identification and description of compliance monitoring devices or activities.

(4) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(5) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(6) Calculations on which the information in 24.105(2)“c”(1) to (5) above is based.

(7) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources

contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to 24.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to 24.108(11) and 567—24.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with 24.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by 24.108(3), 24.108(4), or 24.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use

to achieve compliance with the acid rain emissions limitations.

24.105(3) *Hazardous air pollutant early reduction application.* Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with the Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4)“d.”

24.105(4) *Acid rain application content.* The acid rain application content shall be as prescribed in the acid rain rules found in 567—24.128(455B) and 567—24.129(455B).

24.105(5) *More than one Title V operating permit for a stationary source.* Following application made pursuant to 24.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

567—24.106(455B) Annual Title V emissions inventory.

24.106(1) *Emissions fee.* Fees shall be paid as set forth in 567—Chapter 30.

24.106(2) *Emissions inventory and documentation due dates.* The emissions inventory shall be submitted through the electronic format specified by the department. An owner or operator shall, by March 31, submit documentation of actual emissions for the previous calendar year. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

24.106(3) *Correction of errors.* If an owner or operator, or the department, finds an error in a Title V emissions inventory, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory. Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

567—24.107(455B) Title V permit processing procedures.

24.107(1) *Action on application.*

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 567—24.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under 567—24.112(455B), the permitting authority has complied with the requirements for public participation under 24.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under 24.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The Administrator has received a copy of the proposed permit and any notices required under 24.107(7), and has not objected to issuance of the permit under 24.107(7) within the time period specified therein;

(6) If the Administrator has properly objected to the permit pursuant to the provisions of 40 CFR §70.8(d) as amended to July 21, 1992, or 24.107(7), then the permitting authority may issue a permit only after the Administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality, or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section

112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to 567—subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4) “d.”

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source’s ability to operate without a permit, as set forth in 567—24.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit, the provisions of 24.107(1) “d” shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit, including the comment period, the address where

comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to the EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and 567—subrule 22.1(1).

24.107(2) Confidential information. If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the Administrator. Requests for confidentiality must comply with 561—Chapter 2.

24.107(3) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations, or levels of technology existing on the date the initial application is deemed complete.

24.107(4) Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

24.107(5) Early reduction application evaluation. Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4) “d.”

24.107(6) Public notice and public participation.

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial, or renewal of

a permit; or significant modification, revocation, or reissuance of a permit.

b. Notice shall be given by posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

- (1) Identification of the Title V source.
- (2) Name and address of the permittee.
- (3) Name and address of the permitting authority processing the permit.
- (4) The activity or activities involved in the permit action.
- (5) The emissions change involved in any permit modification.
- (6) The air pollutants or contaminants to be emitted.
- (7) The time and place of any possible public hearing.
- (8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.
- (9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the

hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by 24.107(7).

24.107(7) Permit review by the EPA and affected states.

a. Transmission of information to the Administrator. Except as provided in 24.107(2) or waived by the Administrator, the director shall make available to the Administrator each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be provided in a computer-readable format compatible with the Administrator's national database management system.

b. Review by affected states. The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to 24.107(6), except to the extent that 24.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the Administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. EPA objection. No permit for which an application must be transmitted to the Administrator shall be issued if the Administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 24.107(7) "a." Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

24.107(8) *Public petitions to the Administrator regarding Title V permits.*

a. If the Administrator does not object to a proposed permit, any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make an objection pursuant to 40 CFR §70.8(d).

b. Any person who petitions the Administrator pursuant to the provisions of 40 CFR §70.8(d) shall notify the department by certified mail of such petition immediately, and in no case more than ten days following the date the petition is submitted to the EPA. Such notice shall include a copy of the petition submitted to the EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the Administrator's objection.

c. If the Administrator objects to the permit as a result of a petition filed pursuant to 40 CFR §70.8(d), then the director shall not issue a permit until the Administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the Administrator's objection, and the Administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR §70.7, then the director may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

24.107(9) *Application denial.* A Title V permit application may be denied if:

- a. The director finds that a source is not in compliance with any applicable requirement; or
- b. An applicant knowingly submits false information in a permit application.

24.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

567—24.108(455B) Permit content. Each Title V permit shall include the following elements:

24.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction that qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

24.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

24.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable

requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to 24.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

24.108(4) Recordkeeping. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements;
- (2) The date(s) the analyses were performed;
- (3) The company or entity that performed the analyses;
- (4) The analytical techniques or methods used;
- (5) The results of such analyses; and
- (6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

24.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting

requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 24.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.

24.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

24.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV-affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide

held by the owners or operators of the unit or the designated representative of the owners or operators.

- (2) Exceedances of applicable emission rates.
- (3) The use of any allowance prior to the year for which it was allocated.
- (4) Contravention of any other provision of the permit.

24.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

24.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified; revoked, reopened, and reissued; or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the Administrator of the EPA along with a claim of confidentiality.

24.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to 567—30.4(455B).

24.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be

required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

24.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

- a.* Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and
- b.* Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

24.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

- a.* Shall include all terms required under 24.108(1) to 24.108(13) and 24.108(15) to determine compliance;
- b.* Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and
- c.* May extend the permit shield described in 24.108(18) to all terms and conditions that allow such increases and decreases in emissions.

24.108(14) Federally enforceable requirements.

- a.* All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.
- b.* Notwithstanding paragraph 24.108(14) "a," the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR §70.7 or §70.8.

24.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of 24.108(3) to 24.108(5), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of 24.107(4).

b. Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with 24.105(2) "h," 24.105(2) "j," and 24.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of 24.105(2) "h" and 24.105(2) "j," to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and

work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the Administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

24.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 24.108(16) “*c*” are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of 24.108(5) "b." This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

24.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the Administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR §70.4(b)(10)(i) or (ii) as amended through October 6, 2009; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

24.108(18) Permit shield. The provisions for a permit shield as set forth in 40 CFR §70.6(f) are adopted by reference.

24.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

567—24.109(455B) General permits. The provisions for general permits as set forth in 40 CFR §70.6(d) are adopted by reference.

567—24.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

24.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 through Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in 567—24.140(455B) through 567—24.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the Administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the Administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and

(7) Any permit term or condition no longer applicable as a result of the change.

24.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

24.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of 24.110(1).

24.110(4) The permit shield provided in 24.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

567—24.111(455B) Administrative amendments to Title V permits.

24.111(1) An administrative permit amendment is a permit revision that does any of the following:

- a.* Corrects typographical errors;
- b.* Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- c.* Requires more frequent monitoring or reporting by the permittee; or
- d.* Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

24.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to

Title IV of the Act shall be governed by regulations promulgated by the Administrator under Title IV of the Act.

24.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

24.111(4) The director shall submit to the Administrator a copy of each Title V permit revised under this rule.

24.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

567—24.112(455B) Minor Title V permit modifications.

24.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

- a.* Do not violate any applicable requirement;
- b.* Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Title V permit;
- c.* Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;
- d.* Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;
- e.* Are not modifications under any provision of Title I of the Act; and
- f.* Are not required to be processed as a significant modification under 567—24.113(455B).

24.112(2) An application for minor permit revision shall be on the minor Title V modification application

form and shall include at least the following:

- a.* A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- b.* The source's suggested draft permit;
- c.* Certification by a responsible official, pursuant to 24.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- d.* Completed forms to enable the department to notify the Administrator and affected states as required by 24.107(7).

24.112(3) The department shall notify the Administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of 24.107(7). The department shall promptly send to the Administrator any notification required by 24.107(7).

24.112(4) The director shall not issue a final Title V permit modification until after the Administrator's 45-day review period or until the Administrator has notified the director that the Administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the Administrator's 45-day review period provided for in 24.107(7), whichever is later, the director shall:

- a.* Issue the permit modification as proposed;
- b.* Deny the permit modification application;
- c.* Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- d.* Revise the draft permit modification and transmit to the Administrator the proposed permit modification, as required by 24.107(7).

24.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in 24.112(4) "a" to 24.112(4) "c," the source must comply with both the applicable requirements governing the change and the proposed permit

terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

24.112(6) Permit shield. The permit shield under 24.108(18) shall not extend to minor Title V permit revisions.

567—24.113(455B) Significant Title V permit modifications.

24.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor or administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or recordkeeping permit terms, and any change in the method of measuring compliance with existing requirements.

24.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the Administrator, as those requirements that apply to Title V permit issuance and renewal.

24.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

24.113(4) For a change that is subject to the requirements for a significant permit modification (pursuant to 567—24.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

567—24.114(455B) Title V permit reopenings. The provisions for Title V permit reopenings set forth in 40 CFR §70.7(f) are adopted by reference.

567—24.115(455B) Suspension, termination, and revocation of Title V permits.

24.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

- a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.
- b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.
- c. The terms and conditions of the permit have been or are being violated.
- d. The permittee has failed to pay the Title V permit fees.
- e. The permittee has failed to pay an administrative, civil, or criminal penalty imposed for violations of the permit.

24.115(2) If the director suspends, terminates, or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).

567—24.116(455B) Title V permit renewals.

24.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the Administrator and affected states.

24.116(2) Except as provided in 567—24.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with 567—24.105(455B).

567—24.117 to 24.119 Reserved.

567—24.120(455B) Acid rain program—definitions. The terms used in 567—24.120(455B) through 567—24.146(455B) shall have the meanings set forth in Title IV of the Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through March 28, 2011, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

“*Department*” means the department of natural resources and is the state acid rain permitting authority.

“*Electronic format,*” “*electronic submittal,*” and “*electronic submittal format*” mean the same as defined in 567—22.1(455B).

“*Title V operating permit*” means a permit issued under 567—24.100(455B) through 567—24.116(455B) implementing Title V of the Act.

567—24.121 Reserved.

567—24.122(455B) Applicability. The applicability of the acid rain program as set forth in 40 CFR §72.6 is adopted by reference. A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR §72.6(c).

567—24.123(455B) Acid rain exemptions.

24.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

24.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

24.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

567—24.124 Reserved.

567—24.125(455B) Standard requirements.

24.125(1) *Permit requirements.* Permit requirements as set forth in 40 CFR §72.9(a) are adopted by reference.

24.125(2) *Monitoring requirements.* Monitoring requirements as set forth in 40 CFR §72.9(b) are adopted by reference.

24.125(3) *Sulfur dioxide requirements.* Sulfur dioxide requirements as set forth in 40 CFR §72.9(c) are adopted by reference.

24.125(4) Nitrogen oxides requirements. Nitrogen oxides requirements as set forth in 40 CFR §72.9(d) are adopted by reference.

24.125(5) Excess emissions requirements. Excess emissions requirements as set forth in 40 CFR §72.9(e) are adopted by reference.

24.125(6) Recordkeeping and reporting requirements. Recordkeeping and reporting requirements as set forth in 40 CFR §72.9(f) are adopted by reference.

24.125(7) Liability. Liability provisions as set forth in 40 CFR §72.9(g) are adopted by reference.

24.125(8) Effect on other authorities. The provisions for the effect on other authorities as set forth in 40 CFR §72.9(h) is adopted by reference.

567—24.126(455B) Designated representative—submissions. The provisions for submission by designated representatives as set forth in 40 CFR 72, Subpart B, are adopted by reference.

567—24.127(455B) Designated representative—objections. The provisions for disputes regarding a designated representative as set forth in 40 CFR §72.25 are adopted by reference.

567—24.128(455B) Acid rain applications—requirement to apply. The requirement to apply for an acid rain permit as set forth in 40 CFR §72.30 is adopted by reference.

24.128(1) Duty to reapply. The duty to reapply, as set forth in 40 CFR §72.30(c), is adopted by reference.

24.128(2) Submission of copies. The designated representative shall submit the application in the electronic format specified by the department, if electronic submittal is provided.

567—24.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department and include the following elements:

24.129(1) Identification of the affected source for which the permit application is submitted;

24.129(2) Identification of each affected unit at the source for which the permit application is submitted;

24.129(3) A complete compliance plan for each unit, in accordance with 567—24.131(455B);

24.129(4) The standard requirements under 567—24.125(455B); and

24.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and

the deadline for monitor certification.

567—24.130(455B) Acid rain permit application shield and binding effect of permit application. The provisions for an acid rain permit application shield and the binding effect of a permit application as set forth in 40 CFR §72.32 are adopted by reference.

567—24.131(455B) Acid rain compliance plan and compliance options—general. The general provisions for an acid rain compliance plan and compliance options as set forth in 40 CFR §72.40 are adopted by reference.

567—24.132 Reserved.

567—24.133(455B) Acid rain permit contents—general. The general provisions for acid rain permit contents as set forth in 40 CFR §72.50 are adopted by reference.

567—24.134(455B) Acid rain permit shield. The general provisions for an acid rain permit shield as set forth in 40 CFR §72.51 are adopted by reference.

567—24.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with 567—24.100(455B) through 567—24.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 567—24.135(455B) through 567—24.145(455B).

567—24.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the Administrator within ten working days following a determination by the department that the acid rain permit application is complete.

567—24.137(455B) Acid rain permit issuance procedures—statement of basis.

24.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

24.137(2) The statement of basis will include the reasons, and supporting authority, for approval or

disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

24.137(3) The department will submit to the Administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

567—24.138(455B) Issuance of acid rain permits.

24.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to 24.107(6) and 24.107(7)), the department will address any objections by the Administrator, incorporate all necessary changes and issue or deny the acid rain permit.

24.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the Administrator in accordance with 567—24.100(455B) through 567—24.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

24.138(3) Following the Administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR §70.8(c), the Administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with 567—24.133(455B) and 567—24.134(455B).

24.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the Administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

24.138(5) Permit issuance deadline and effective date.

a. and *b.* Reserved.

c. Each acid rain permit issued in accordance with 24.138(5) "*a*" shall take effect by the later of January 1, 2000, or, where the permit governs a unit under 24.122(1) "*c*," the deadline for monitor certification under 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

24.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

24.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

567—24.139(455B) Acid rain permit appeal procedures.

24.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the Administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference in 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under 40 CFR Part 78, as amended through March 20, 2017, and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

24.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

24.139(3) The Administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

24.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

- a.* The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;
- b.* Any standard requirement under 567—24.125(455B);

- c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 567—25.2(455B);
- d. Uncontested provisions of the decision on appeal; and
- e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

24.139(5) The department will serve written notice on the Administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

24.139(6) The department will serve written notice on the Administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 24.107(7) and 24.107(8).

567—24.140(455B) Permit revisions—general.

24.140(1) 567—24.140(455B) through 567—24.145(455B) shall govern revisions to any acid rain permit issued by the department.

24.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

24.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

24.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the Administrator in accordance with 40 CFR §70.8(c), as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 567—24.143(455B).

24.140(5) The standard requirements of 567—24.125(455B) shall not be modified or voided by a permit revision.

24.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for

approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 567—24.131(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

24.140(7) For permit revisions not described in 567—24.141(455B) and 567—24.142(455B), the department may, in its discretion, determine which of these rules is applicable.

567—24.141(455B) Permit modifications.

24.141(1) Permit modifications shall follow the permit issuance requirements of 567—24.135(455B) through 567—24.139(455B) and 24.113(2) and 24.113(3).

24.141(2) For purposes of applying 24.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with 567—24.140(455B) through 567—24.145(455B).

24.141(3) The following permit revisions are permit modifications:

- a.* Relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;
- b.* Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period; and
- c.* Reserved.
- d.* At the option of the designated representative submitting the permit revision, the permit revisions listed in 24.142(2).

567—24.142(455B) Fast-track modifications. The requirements for fast-track modifications as set forth in 40 CFR §72.82 are adopted by reference.

567—24.143(455B) Administrative permit amendment.

24.143(1) Administrative amendments shall follow the procedures set forth in 567—24.111(455B). The department will submit the revised portion of the permit to the Administrator within ten working days after the date of final action on the request for an administrative amendment.

24.143(2) The following permit revisions are administrative amendments:

- a. Activation of a compliance option conditionally approved by the department, provided that all requirements for activation under 24.131(3) are met;
- b. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the Administrator in accordance with Subpart B of 40 CFR Part 72;
- c. Correction of typographical errors;
- d. Changes in names, addresses, or telephone numbers;
- e. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the Administrator and the department in accordance with Subpart B of 40 CFR Part 72;
- f. Termination of a compliance option in the permit, provided that all requirements for termination under 24.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;
- g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with 567—24.125(455B);
- h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing Section 407 of the Act are met; and
- i. Incorporation of changes that the Administrator has determined to be similar to those in 24.143(2)“a” through 24.143(2)“h.”

567—24.144(455B) Automatic permit amendment. The provisions for automatic permit amendments as set forth in 40 CFR §72.84 are adopted by reference.

567—24.145(455B) Permit reopenings. The provisions for permit reopenings as set forth in 40 CFR §72.85 are adopted by reference.

567—24.146(455B) Compliance certification—annual report.

24.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the

Administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR §72.90.

24.146(2) The submission of complete compliance certifications in accordance with 24.146(1) and 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under 24.108(15)“e” with regard to the acid rain portion of the source’s Title V operating permit.

567—24.147 Reserved.

567—24.148(455B) Sulfur dioxide opt-ins. The provisions for sulfur dioxide opt-ins as set forth in 40 CFR Part 74 as amended through April 28, 2006, are adopted by reference.

567—24.149 to 24.299 Reserved.

567—24.300(455B) Operating permit by rule for small sources. Except as provided in 24.300(11), any source that otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources that comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources that comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—24.100(455B).

24.300(1) Definitions for operating permit by rule for small sources. For the purposes of 567—24.300(455B), the definitions shall be the same as the definitions found in 567—24.100(455B).

24.300(2) Registration for operating permit by rule for small sources.

a. Except as provided in 24.300(3) and 24.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in 24.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source’s

responsibility to meet any and all applicable federal requirements including, but not limited to, a MACT standard.

c. Nothing in this rule shall prevent any stationary source that has had a Title V operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or upon rescission of a Title V operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in 24.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 22.

24.300(3) *Exceptions to eligibility.*

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 24.300(2) “*a*” and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

c. Sources which meet the registration criteria established in 24.300(2) “*a*” and meet all applicable requirements of 567—24.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories), or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in 24.102(1) or 24.102(2) no longer apply.

24.300(4) *Stationary source with de minimus emissions.* Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 24.300(8). Only the recordkeeping and reporting provisions listed in 24.300(4) “*b*” shall apply to a

stationary source with de minimus emissions or operations as specified in 24.300(4) “a”:

a. *De minimus emission and usage limits.* For the purpose of this rule, a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding hazardous air pollutants (HAPs)),
and

2. 2 tons per year of a single HAP, and

3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source’s emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in numbered paragraphs “1” to “9” below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;
8. 500,000 gallons of distillate oil combusted; or
9. 71,400,000 cubic feet of natural gas combusted.

b. Recordkeeping for de minimus sources. Upon registration with the department, the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable recordkeeping requirements of this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimus sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or EPA, the owner or operator of a stationary source not maintaining records pursuant to 24.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in 24.300(4) "a."

24.300(5) Provision for air pollution control equipment. The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

24.300(6) Emission limitations.

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in 24.300(6)“a.”

24.300(7) Recordkeeping requirements for non-de minimus sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable recordkeeping requirements in this rule. The recordkeeping requirements of this rule shall not replace any recordkeeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 24.300(4) shall comply with the applicable provisions of 24.300(7) (recordkeeping requirements) and 24.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in 24.300(4)“a.”

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 24.300(7)“c” below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years and be made available to local, state, or EPA staff upon request.

c. Recordkeeping requirements for emission units and emission control equipment. Recordkeeping requirements for emission units are specified in 24.300(7)“c”(1) through 24.300(7)“c”(4). Recordkeeping requirements for emission control equipment are specified in 24.300(7)“c”(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 567—subrule 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include MSDS, manufacturer’s product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used and show at least the product

manufacturer, product name and code, VOC, and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make, and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in 24.300(7)“c”(1), (2), or (3) shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make, and model and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;
2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and
3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, or maintenance and any other deviations from design parameters.

24.300(8) *Registration and reporting requirements.*

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in 567—24.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to 567—24.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under 567—24.101(455B).
2. Within 12 months of becoming subject to 567—24.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source that would otherwise become subject to the Title V permit

requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete, the registration form must provide all information required pursuant to 24.300(8) “b.”

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, and predicted actual emissions from the source and to determine whether the source is subject to the exceptions listed in 24.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;
2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;
3. Identification and description of air pollution control equipment;
4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;
5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—24.100(455B);

(4) Requirements for certification. Facilities that claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

“I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 24.300(8) “b.” I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of 567—24.300(455B) only if all applicable requirements of 567—24.300(455B) are met and if the registration is not denied by the director under 567—24.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete.” The certification must be signed by one of the following individuals:

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined in 567—24.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected

official.

24.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.*

This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for a Title V operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 24.300(8) “*b*” for the new or modified source.

24.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including 567—24.101(455B) through 567—24.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in 24.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in 24.300(6).

24.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating

permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates, or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of 561—7.16(17A,455A).

24.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change; and

b. The name, address, and telephone number of the responsible official, the contact person, and the owner of the equipment both before and after the change of ownership.

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***20. Chapter 27, “Certificate of Acceptance” – Final Rule**

The Commission is requested to approve the Final rule to rescind and replace Chapter 27, “Certificate of Acceptance.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: New Chapter 27 includes updated and streamlined rules to provide political subdivisions, such as municipalities and counties, with the conditions necessary to obtain and maintain a certificate of acceptance (delegation) of the local air pollution control program.

The Linn County and Polk County local air programs are currently the only two local air programs in Iowa with certificates of acceptance. The new Chapter 27 will ensure that the requirements of the federal Clean Air Act continue to be implemented in Linn and Polk counties in a manner that is consistent with the Department’s implementation of these requirements in the other 97 counties in Iowa.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7226C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Jim McGraw, Supervisor
Air Quality Bureau, Program Development & Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 27 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 27, “Certificate of Acceptance,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 455B.145.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7(2) and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 27. The new Chapter 27 includes updated and streamlined rules.

Chapter 27 provides political subdivisions, such as municipalities and counties, with the conditions necessary to obtain and maintain a certificate of acceptance (delegation) of a local air pollution control program. The Linn County and Polk County local air programs are currently the only two local air programs in Iowa with certificates of acceptance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7226C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearing. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27

CERTIFICATE OF ACCEPTANCE

567—27.1(455B) General. Political subdivisions shall meet the conditions specified in this chapter if the political subdivisions pursue acceptance of the local air pollution control program and to obtain a certificate of acceptance

from the director, as provided in Iowa Code section 455B.145.

567—27.2(455B) Certificate of acceptance. The governing body of a political subdivision may make application for a certificate of acceptance.

27.2(1) Forms. Each application for a certificate of acceptance shall be submitted to the director on forms available from the department.

27.2(2) Processing of applications. The director shall make an investigation of the program or portion of a program covered by an application for a certificate of acceptance to evaluate conformance with applicable provisions of Iowa Code section 455B.145.

a. Granting of certificate. A certificate of acceptance may be granted by the director if the program is consistent with Iowa Code chapter 455B, division II, and the rules established in this chapter.

b. Review of program. The director shall provide for a review of the program activities at intervals as the director prescribes for evaluation of the continuation of the certificate. Following the review, the director may continue the certificate in effect or suspend the certificate, in conformance with Iowa Code sections 455B.134(12) and 455B.145.

567—27.3(455B) Ordinance or regulations.

27.3(1) Legal aspects. Each local control program considered for a certificate of acceptance must be conducted under an appropriate ordinance or set of regulations, as specified in Iowa Code section 455B.145 and this rule.

27.3(2) Legal authority. The ordinance or regulations shall provide authority to the local control agency as follows:

a. Scope of control. Authority and responsibility for air pollution control within the entire area included in the jurisdiction involved.

b. Degree of control. Authority to prevent, abate and control air pollution from all sources within its area of jurisdiction, in accordance with requirements consistent with the provisions specified in these rules.

c. Enforcement. Legal authority to enforce its requirements and standards.

d. Inspection and tests. Legal authority to make inspections, perform emission tests and obtain data, reports or other information relating to sources of air pollution that may be necessary to prepare air contaminant emission inventories, and to evaluate control measures needed to meet specified goals.

27.3(3) Control of air pollution. The ordinance or regulations shall contain provisions applicable to the control or prohibition of emissions of air contaminants as listed below.

a. Emission control. Requirements specifying maximum concentrations, density or rates of discharge of emissions of air contaminants from specified sources.

(1) These requirements may be included in the ordinance or regulations, or in standards adopted by the local control agency under the authority granted by such ordinance or regulations.

(2) These requirements shall not establish an emission standard for any specific source that is in excess of the emission standard specified in 567—Chapter 23 for that source.

b. Prohibition of emissions. Provisions prohibiting the installation of equipment having a potential for air pollution without adequate control equipment. Such restriction may be included in the building code applicable to the jurisdiction covered by the local control agency.

c. Open burning. Provisions prohibiting open burning, including backyard burning, in urban areas within the jurisdiction of the local control agency.

(1) Provisions relating to backyard burning may consist of a program requiring the prohibition of such burning within a reasonable period of time.

(2) Provisions applicable to open burning may include a variance procedure, so long as no variance that would prevent the attainment or maintenance of ambient air quality standards for suspended particulates and carbon monoxide is issued.

d. Requirements for permits. Provisions requiring installation and operating permits for all new or altered equipment capable of emitting air contaminants into the atmosphere installed within the jurisdiction of the local control agency.

27.3(4) Enforcement. The ordinance or regulations of the local control agency shall include an effective

mechanism for enforcing the provisions specified thereunder, as listed below.

a. Procedures. The local control ordinance or regulations shall specify that any violation of its provisions is subject to civil and criminal penalties.

b. Penalties. The penalties specified in such ordinance or regulations shall include fines, injunctive relief and sealing of equipment found to be not in compliance with applicable provisions of the ordinance or regulations.

c. Procedures for granting variances or extensions of time to attain compliance status. The local control agency shall maintain on file a record of the names, addresses, sources of emissions, types of emissions, rates of emissions, reason for granting, conditions and length of time specified, relating to all variances or extension of time granted and shall make such records available to the commission or the department upon request.

567—27.4(455B) Administrative organization.

27.4(1) Administrative facilities. Each local control program considered for a certificate of acceptance must have the administrative facilities necessary for effective operation of such program including, but not limited to, those listed below.

a. Agency. Designation of a legally constituted body within the organizational structure of the applicable political subdivision or combination of political subdivisions, as the administrative authority for the local control program.

b. Procedures. Adoption of definite administrative procedures for developing, promulgating and enforcing requirements and standards for air pollution control within the jurisdiction of the local control agency.

c. Staff. Employment of a technical and clerical staff deemed adequate to conduct the air pollution control activities in the local control program.

(1) Key technical staff personnel shall have received training or experience in air quality management program procedures.

(2) At least one member of the technical staff shall be assigned full-time duty in the operation of the local control program.

27.4(2) Financial support. Each local control program considered for a certificate of acceptance shall have

adequate financial support for the operation of effective program activities.

27.4(3) *Physical facilities.* Each local control program considered for a certificate of acceptance must have the physical facilities necessary for the operation of effective program activities, including those listed below.

a. Office space. Sufficient office space and equipment to accommodate the members of the technical and clerical staff.

b. Laboratory facilities. The laboratory space and equipment shall be adequate for the effective exercise of the specific functions required in the operation of the local control program.

c. Transportation facilities. These facilities shall include provisions for transportation of personnel to service air monitoring equipment, visits to sources of emissions for investigative purposes and other appropriate program activities.

567—27.5(455B) Program activities. Each local control program considered for a certificate of acceptance must conduct air pollution control activities adequate to provide adequate control of air pollution within the jurisdiction of the local control program, including, but not limited to, those listed below. In conducting these program activities, the local control agency shall make every effort to meet the specified ambient air quality objectives applicable to the state of Iowa.

27.5(1) *Evaluation of problems.* Conduct activities to determine the actual and potential air pollution problems within the jurisdiction of the local control agency, and comparison of the present air quality in that jurisdiction with the air quality standards and objectives promulgated for this state. The air quality within the jurisdiction shall be determined by an air monitoring program, using sampling techniques and laboratory determinations compatible with those used in the air pollution control program of this state. The air monitoring program of the local control agency shall give attention to the air contaminants considered to be indices of pollution in this state.

27.5(2) *Control activities.* Conduct activities to abate or control emissions of air contaminants from existing equipment or from new or altered equipment located within the jurisdiction of the local control agency.

a. A program of plant inspections shall be conducted with respect to control of emissions from existing equipment. These activities should include the collection of data related to the types of emissions and the rate of

discharge of emissions from each source involved, along with stack sampling when deemed appropriate.

b. Procedures for plan review and the issuing of permits relating to the installation or alteration such that the emission of air contaminants is significantly altered, shall be conducted with respect to control of emissions from new or altered sources. These procedures may include provisions for permits relating to the use of the equipment involved.

These rules are intended to implement Iowa Code sections 455B.133, 455B.143, and 455B.145.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***21. Chapter 30, “Fees” – Final Rule**

The Commission is requested to approve the Final rule to rescind and replace Chapter 30, “Fees.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: New Chapter 30 includes streamlined provisions for specific air quality fees owed by sources that emit air pollution. The Air Contaminant Source Fund (Iowa Code section 455B.133B) was established to receive emissions and operating permit fees. The Air Quality Fund (Iowa Code section 455B.133C) was established to receive construction permit and asbestos notifications fees.

The fees directly support the air quality program in its mandate to prevent, ablate, and control air pollution in Iowa. The fees collected provide funding for approximately 72 percent of the Department’s air quality programmatic costs.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7219C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Jim McGraw, Supervisor
Air Quality Bureau, Program Development & Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 30 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 30, “Fees,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 455B.133, 455B.133B and 455B.133C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 30. The new chapter includes updated and streamlined rules for air quality fees.

In more detail, Chapter 30 defines specific air quality fees owed by air contaminant sources. These fees directly support the air quality program, which exists to prevent, abate, and control air pollution in the state of Iowa. The Air Contaminant Source Fund (Iowa Code section 455B.133B) was established to receive emissions and operating permit fees. The Air Quality Fund (Iowa Code section 455B.133C) was established to receive construction permit and asbestos notifications fees.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7219C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearings. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30

FEES

567—30.1(455B) Purpose. This chapter sets forth requirements to pay fees for specified activities. The department shall not initiate review and processing of an application submittal from a minor source until all

required fees have been paid to the department. Fees are nonrefundable, except as provided in 30.1(4).

30.1(1) Definition. For purposes of this chapter, the following definition shall apply:

“Application submittal” means one or more applications required under 567—22.1(455B) and submitted at the same time or required to be submitted under 567—22.4(455B), 567—22.5(455B), 567—Chapter 31 or 567—Chapter 33.

30.1(2) Duty to correct errors. If an owner, an operator, or the department finds an error in a fee assessed or collected under this chapter, the owner or operator shall submit to the department revised forms making the necessary corrections to the fee and shall submit the correct fee. Corrected forms shall be submitted as soon as possible after the error is discovered or upon notification by the department. If the error correction results in a determination by the department that a fee was overpaid or that a duplicate fee was submitted, the department will return the overpaid balance of the fee to the applicant.

30.1(3) Exemption to fee requirements for administrative amendments. A fee shall not be required for any of the following:

- a. Corrections of typographical errors;
- b. Corrections of word processing errors;
- c. Changes in the name, address, or telephone number of any person identified in a permit, or similar minor administrative changes at the source; and
- d. Changes in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility and coverage, and liability between the current permittee and the new permittee has been submitted to the department.

30.1(4) Refund of application fee minus administrative cost for permit applications at minor sources. The department may refund the application fee minus administrative costs if the owner or operator requests to withdraw the application prior to commencement of the technical review of the application.

567—30.2(455B) Fees associated with new source review applications. Each owner or operator required to provide an application submittal, including air quality modeling as applicable; registration; permit by rule; and

template under 567—subrule 22.1(1), 567—22.4(455B), 567—22.5(455B), 567—22.8(455B), 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33, shall pay fees as specified in the fee schedule approved by the commission and posted on the department’s website. Fees shall be submitted with forms supplied by the department.

30.2(1) *Payment of regulatory applicability determination fee.* Each owner or operator requesting a regulatory applicability determination, as specified in 567—paragraph 22.1(3) “a,” shall pay fees as specified in the fee schedule approved by the commission and posted on the department’s website. Fees shall be submitted with forms provided by the department.

30.2(2) Reserved.

567—30.3(455B) Fees associated with asbestos demolition or renovation notification.

30.3(1) *Payment of fees established.* The owner or operator of a site subject to the national emission standard for hazardous air pollutants (NESHAP) for asbestos notifications, adopted by reference in 567—paragraph 23.1(3) “a,” shall submit a fee with each required original or each annual notification for each demolition or renovation, including abatement. Fees shall be paid as specified in the fee schedule approved by the commission and posted on the department’s website. Fees shall be submitted with the notification forms provided by the department.

30.3(2) *Fee not required.* A fee shall not be required for the following:

- a. Notifications when the total amount of asbestos to be removed or disturbed is less than 260 linear feet, less than 160 square feet, and less than 35 cubic feet of facility components and is below the reporting thresholds as defined in 40 CFR 61.145 as amended on January 16, 1991;
- b. Notifications of training fires as required in 567—paragraph 23.2(3) “g”;
- c. Controlled burning of demolished buildings as required in 567—paragraph 23.2(3) “j”;
- d. Revised, canceled, and courtesy notifications. A revision to a previously submitted courtesy notification due to applicability of the notification requirements in 567—paragraph 23.1(3) “a” is considered an original notification and is subject to the fee requirements of 30.3(1).

567—30.4(455B) Fees associated with Title V operating permits.

30.4(1) *Payment of Title V application fee.* Each owner or operator required to apply for a Title V permit, or a renewal of a Title V permit, shall pay fees as specified in the fee schedule approved by the commission and posted on the department's website. Fees shall be submitted with forms supplied by the department.

30.4(2) *Payment of Title V annual emissions fee.*

a. Fee required. Any person required to obtain a Title V permit shall pay an annual fee based on the first 4,000 tons of each regulated air pollutant and shall be paid on or before July 1 of each year. The Title V emissions fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The commission shall not set the fee higher than \$70 per ton without adopting the change pursuant to formal rulemaking.

b. Fee and documentation due dates. The fee shall be submitted annually by July 1 with forms specified by the department.

c. Operation in Iowa. The fee for a portable emissions unit or stationary source that operates both in Iowa and out of state shall be calculated only for emissions from the source while it is operating in Iowa.

d. Title V exempted stationary sources. No fee shall be required for emissions until the year in which sources exempted under 567—subrules 24.102(1) and 24.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

e. Insignificant activities. No fee shall be required for insignificant activities as defined in 567—24.103(455B).

567—30.5(455B) Fee stakeholder meetings. Prior to each March commission meeting, the director shall convene fee stakeholder meetings as specified in Iowa Code sections 455B.133B and 455B.133C for the purposes of reviewing a draft budget and providing recommendations to the department regarding establishing or adjusting fees. Any stakeholder may attend the fee stakeholder meetings. The meetings will be open to the public. The date of each meeting shall be posted on the department's website 14 days prior to the meeting.

567—30.6(455B) Process to establish or adjust fees and notification of fee rates.

30.6(1) *Setting the fees.* The department shall submit the proposed budget and fees for major and minor source construction permit programs, the Title V operating permit program, and the asbestos NESHAP program for the following fiscal year to the commission no later than the March commission meeting of each year, at which time the proposal will be available for public comment until such time as the commission acts on the proposal or until the May commission meeting, whichever occurs first. The department's calculated estimate for each fee shall not produce total revenues in excess of limits specified in Iowa Code sections 455B.133B and 455B.133C during any fiscal year. If an established fee amount must be adjusted, the commission shall set the fees no later than the May commission meeting of each year.

Adjusted or established fees shall become effective on July 1. A fee not adjusted by the commission shall remain in effect as previously established until the fee is adjusted by the commission.

30.6(2) *Fee types and dollar caps on fee types.* The commission may set fees for the fee types and activities specified in this subrule and shall not set a fee in the fee schedule higher than the levels specified in this subrule without adopting the change pursuant to formal rulemaking:

a. New source review applications from major sources, which may include:

- (1) Review of each application for a construction permit: \$115 per hour;
- (2) Review of each application for a prevention of significant deterioration permit: \$115 per hour;
- (3) Review of each plantwide applicability limit request, renewal, or reopening: \$115 per hour;
- (4) Review of each regulatory applicability determination: \$115 per hour; and
- (5) Air quality modeling review: \$90 per hour.

b. New source review applications from minor sources, which may include:

- (1) Each application for a construction permit: \$385;
- (2) Each application for a registration permit: \$100;
- (3) Each application for a permit by rule: \$100; and
- (4) Each application for a permit template: \$100.

c. Asbestos notifications: \$100.

d. Review of each initial or renewal Title V operating permit application: \$100 per hour.

e. Title V annual emissions: \$70 per ton.

30.6(3) *Notification of fee schedule.* Following the initial setting of any fee by the commission, the department shall make available to the public a fee schedule at least 30 days prior to its effective date. If any established fee amount is adjusted, the department shall make available to the public a revised fee schedule at least 30 days prior to its effective date. The fee schedule shall be posted on the department's website.

These rules are intended to implement Iowa Code sections 455B.133, 455B.133B, and 455B.133C.

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***22. Chapter 31, “Nonattainment New Source Review” – Final Rule**

The Commission is requested to approve the Final rule to rescind Chapter 31, “Nonattainment Areas,” and replace it with a new Chapter 31, “Nonattainment New Source Review.” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: New Chapter 31 establishes the specific preconstruction review and permitting program that applies to new or modified major stationary sources of air pollutants in areas that do not meet the National Ambient Air Quality Standards (NAAQS). The nonattainment new source review rules work in conjunction with emissions control plans developed in areas that have been designated as nonattainment to ensure that the air quality in a nonattainment area does not further deteriorate due to the construction of new or modified sources of air emissions.

New Chapter 31 provides a dedicated chapter for the nonattainment area permit program that offers businesses and the public more streamlined and up-to-date air quality requirements.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7211C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Christine Paulson, Environment Specialist Senior
Air Quality Bureau, Program Development and Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 31 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

The Environmental Protection Commission (Commission) hereby rescinds Chapter 31, “Nonattainment Areas,” and adopts a new Chapter 31, “Nonattainment New Source Review,” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 31. The new Chapter 31 includes updated and streamlined rules for permitting requirements relating to nonattainment areas.

Chapter 31 establishes the requirements for the preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants in areas that do not meet the National Ambient Air Quality Standards (NAAQS). Areas where the NAAQS are not being met are referred to as nonattainment areas. These requirements are established under Part D of Title I of the U.S. Clean Air Act (CAA), federal regulations, and Iowa Code section 455B.133.

The nonattainment new source review rules work in conjunction with emissions control plans developed for areas that have been designated as nonattainment. Combined, these rules ensure that the air quality in a nonattainment area do not further deteriorate due to the construction of new or modified sources of air emissions.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7211C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearings. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31

NONATTAINMENT NEW SOURCE REVIEW

567—31.1(455B) Permit requirements relating to nonattainment areas.

31.1(1) This chapter implements the nonattainment new source review (NNSR) program contained in Part D of Title I of the federal Clean Air Act and as promulgated under 40 CFR §51.165 as amended through March 30, 2011, and 40 CFR Part 51, Appendix S, as amended through July 1, 2011.

31.1(2) The NNSR program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part D of Title I of the federal Clean Air Act as amended through November 15, 1990. The NNSR program applies only in areas that do not meet the national ambient air quality standards (NAAQS).

31.1(3) Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the NAAQS, that are lower than those standards, or that cannot be classified on the basis of current data.

31.1(4) A list of Iowa's nonattainment area designations is found at 40 CFR §81.316. An owner or operator required to apply for a construction permit under this chapter or requesting a plantwide applicability limit (PAL) shall submit fees as required in 567—Chapter 30.

567—31.2 Reserved.

567—31.3(455B) Nonattainment new source review (NNSR) requirements for areas designated nonattainment.

31.3(1) Definitions. For the purpose of NNSR, the following definitions shall apply:

“*Act*” means the Clean Air Act, 42 U.S.C. §7401, et seq., as amended through November 15, 1990.

“Actual emissions” means:

1. The actual rate of emissions of a regulated new source review (NSR) pollutant from an emissions unit, as determined in accordance with paragraphs “2” through “4,” except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 567—31.9(455B). Instead, the definitions of projected actual emissions and baseline actual emissions shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“Administrator” means the administrator for the U.S. Environmental Protection Agency (EPA) or designee.

“Allowable emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“Baseline actual emissions,” for the purposes of this rule, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs “1” through “4.”

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph “1”(b) of this definition.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this rule or under a plan approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any

period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 31.3(3)“b”(7).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs “2”(b) and “2”(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit’s potential to emit.

4. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “1,” for other existing emissions units in accordance with the procedures contained in paragraph “2,” and for a new emissions unit in accordance with the procedures contained in paragraph “3.”

“Begin actual construction” means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

“Best available control technology” or *“BACT”* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61, and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

“Building, structure, facility, or installation” means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972,

as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by title and part, so that “40 CFR 51” or “40 CFR Part 51” means “Title 40 Code of Federal Regulations, Part 51.”

“*Clean coal technology*” means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

“*Clean coal technology demonstration project*” means a project using funds appropriated under the heading “Department of Energy—Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

“*Commence*,” as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“*Construction*” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

“*Continuous emissions monitoring system*” or “*CEMS*” means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

“*Continuous emissions rate monitoring system*” or “*CERMS*” means the total equipment required for the

determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

“*Continuous parameter monitoring system*” or “*CPMS*” means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

“*Electric utility steam generating unit*” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“*Emissions unit*” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this rule, there are two types of emissions units as described in paragraphs “1” and “2.”

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph “1” of this definition. A replacement unit is an existing emissions unit.

“*Federal land manager*” means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

“*Federally enforceable*” means all limitations and conditions that are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued

under such program.

“*Fugitive emissions*” means those emissions that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“*Lowest achievable emissions rate*” or “*LAER*” means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

“*Major modification*” means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair, and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition that was established after December 12, 1976, pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR Subpart I or §51.166; or the source is approved to use under any permit issued under regulations approved pursuant to this rule;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition that was established after December 21, 1976, pursuant to 40 CFR §52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I, or 40 CFR §51.166;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 567—31.9(455B) for a PAL for that pollutant. Instead, the definition in 567—31.9(455B) shall apply.

4. For the purpose of applying the requirements of 31.3(8) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

5. Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act.

“Major stationary source” means:

1. Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Act, according to definitions in 31.3(1).

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator as amended through [the effective date of these rules]).

(f) 70 tons per year of PM10 in any serious nonattainment area for PM10.

2. For the purposes of applying the requirements of 31.3(8) to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source that emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the following emission thresholds apply in areas subject to Subpart 2 of Part D, Title I of the Act:

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

3. Any physical change that would occur at a stationary source not qualifying under 31.3(1) as a

major stationary source, if the change would constitute a major stationary source by itself.

4. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

5. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System (NAICS) codes 325193 or 312140); fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

“Necessary preconstruction approvals or permits” means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the SIP.

“Net emissions increase” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero: the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements of 31.3(2)“b,” and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.

Baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of “baseline actual emissions,” except that paragraphs “1”(c) and “2”(d) shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph “1” of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

(c) Reserved.

3. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

4. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emission or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) The department has not relied on a decrease in actual emissions in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or has not relied on a decrease in actual emissions in demonstrating attainment or reasonable further progress; and

(d) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

5. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit

that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

6. Actual emissions shall not apply for determining creditable increases and decreases or after a change.

“Nonattainment new source review program” or “NNSR program” means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this rule, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI, as amended through October 25, 2012. Any permit issued under such a program is a major NSR permit.

“Pollution prevention” means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. *“Pollution prevention”* does not mean recycling (other than certain in-process recycling practices), energy recovery, treatment, or disposal.

“Potential to emit” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“Predictive emissions monitoring system” or “PEMS” means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

“Prevention of significant deterioration permit” or “PSD permit” means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR §51.166, or under the program in 40 CFR §52.21.

“Project” means a physical change in, or change in the method of operation of, an existing major

stationary source.

“Projected actual emissions” means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

2. Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

4. In lieu of using the method set out in paragraphs “1” through “3,” may elect to use the emissions unit’s potential to emit, in tons per year.

“Reasonable period” means an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

“Regulated NSR pollutant” means the following:

1. Nitrogen oxides or any volatile organic compounds;

2. Any pollutant for which a national ambient air quality standard has been promulgated;

3. Any pollutant that is identified as a constituent or precursor of a general pollutant listed under paragraph “1” or “2,” provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(b) Sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas.

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the department demonstrates to the EPA’s satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM_{2.5} concentrations.

(d) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the department demonstrates to the EPA’s satisfaction or the EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area’s ambient PM_{2.5} concentrations; or

4. PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

“*Replacement unit*” means an emissions unit for which all the criteria listed in paragraphs “1” through “4” of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not alter the basic design parameters of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter.

If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

“*Reviewing authority*” means the department of natural resources.

“*Secondary emissions*” means emissions that would occur as a result of the construction or operation of a major stationary source or major modification but do not come from the major stationary source or major modification itself. For the purpose of this rule, “secondary emissions” must be specific, be well defined, be quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. “Secondary emissions” includes emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. “Secondary emissions” does not include any emissions that come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

“*Significant*” means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

- (a) Carbon monoxide: 100 tons per year (tpy)
- (b) Nitrogen oxides: 40 tpy
- (c) Sulfur dioxide: 40 tpy
- (d) Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
- (e) Lead: 0.6 tpy
- (f) PM10: 15 tpy
- (g) PM2.5: 10 tpy of direct PM2.5 emissions, 40 tpy of sulfur dioxide emissions, or 40 tpy of

nitrogen oxide emissions unless the department demonstrates to the EPA’s satisfaction that the emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM2.5 concentrations.

2. Notwithstanding the significant emissions rate for ozone, “significant” means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds

that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

3. For the purposes of applying the requirements of 31.3(8) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs “1,” “2,” and “5” shall apply to nitrogen oxides emissions.

4. Notwithstanding the significant emissions rate for carbon monoxide, “significant” means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the department has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

5. Notwithstanding the significant emissions rates for ozone under paragraphs “1” and “2,” any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act shall be considered a significant net emissions increase.

“*Significant emissions increase*” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

“*Stationary source*” means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

“*Temporary clean coal technology demonstration project*” means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile

organic compounds” found at 40 CFR §51.100(s) as amended through February 8, 2023.

31.3(2) *Applicability procedures.*

a. This subrule adopts a preconstruction review program to satisfy the requirements of Sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under Subpart C of 40 CFR Part 81 as amended through August 5, 2013, and shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under Section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

b. Each plan shall use the specific provisions of subparagraphs (1) through (6) of this paragraph. Deviations from these provisions will be approved only if the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in subparagraphs (1) through (6) of this paragraph.

(1) Except as otherwise provided in 31.3(2)“*c*,” and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subparagraphs (3) through (6) of this paragraph. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) Reserved.

(6) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (3) and (4) of this paragraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

c. The plan shall require that for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 567—31.9(455B).

31.3(3) Creditable offsets.

a. For sources and modifications subject to any preconstruction review program, the baseline for determining credit for emissions reductions is the emissions limit in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. Providing that:

(1) Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions

for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure that would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(3) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may be generally credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subparagraph, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements above may be generally credited only if the shutdown or curtailment occurred on or after the date the construction permit application is filed; or the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of this subparagraph;

(4) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of the EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(5) All emission reductions claimed as offset credit shall be federally enforceable;

(6) Procedures relating to the permissible location of offsetting emissions shall be followed that are at least as stringent as those set out in 40 CFR Part 51, Appendix S, Section IV.D, as amended on October 25, 2012;

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or the state has not relied on it in demonstration attainment or reasonable further progress;

(8) and (9) Reserved.

(10) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

31.3(4) *Fugitive emissions.* The department may provide that the provisions of this subrule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140); fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

31.3(5) *Enforceable procedures.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state, or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7,

1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

31.3(6) Reasonable possibility. Except as otherwise provided in 31.3(6)“f,” the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of 31.3(6)“f,” that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs “1” through “3” of the definition of “projected actual emissions” for calculating projected actual emissions. Deviations from these provisions will be approved only if the state specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in 31.3(6)“a” through “f.”

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph “3” of the definition of “projected actual emissions” and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in 31.3(6)“a” to the department. Nothing in 31.3(6)“b” shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could

increase as a result of the project and that is emitted by any emissions units identified in 31.3(6) “a”(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under 31.3(6) “c” setting out the unit’s annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in 31.3(6) “a,” exceed the baseline actual emissions (as documented and maintained under 31.3(6) “a”(3)), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained under 31.3(6) “a”(3). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

- (1) The name, address, and telephone number of the major stationary source;
- (2) The annual emissions as calculated pursuant to 31.3(6) “c”; and
- (3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

f. A reasonable possibility under this subrule occurs when the owner or operator calculates the project to result in either:

(1) A projected actual emissions increase of at least 50 percent of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant; or

(2) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph “3” of the definition of “projected actual emissions,” sums to at least 50 percent of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for

the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subparagraph, and not also within the meaning of 31.3(6)“*f*”(1), then 31.3(6)“*b*” through “*e*” do not apply to the project.

31.3(7) *Availability of records.* The owner or operator of the source shall make the information required to be documented and maintained pursuant to this subrule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR §70.4(b)(3)(viii) as amended through October 6, 2009.

31.3(8) *Applicability to nitrogen oxides emissions.* The requirements of this subrule applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NOX waiver applying the standards set forth under Section 182(f) of the Act and the waiver continues to apply.

31.3(9) *Offset ratios.*

a. In meeting the emissions offset requirements of 31.3(3), the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in 31.3(9)“*b*” through “*d*.”

b. The plan shall require that in meeting the emissions offset requirements of 31.3(3) for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

- (1) In any marginal nonattainment area for ozone—at least 1.1:1;
- (2) In any moderate nonattainment area for ozone—at least 1.15:1;
- (3) In any serious nonattainment area for ozone—at least 1.2:1;
- (4) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC).

c. Notwithstanding the requirements of 31.3(9) for meeting the requirements of 31.3(3), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act.

d. In meeting the emissions offset requirements of 31.3(3) for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the Act (but are not subject to Subpart 2, Part D, Title I of the Act, including eight-hour ozone nonattainment areas subject to 40 CFR §51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

31.3(10) *Applicability to PM₁₀ precursors.* The requirements of this rule applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors.

31.3(11) *Specifications for emissions offsets.* In meeting the emissions offset requirements of 31.3(3), the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subrule. The offset requirements in 31.3(3) for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} may be satisfied by offsetting reductions in direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

567—31.4(455B) Preconstruction review permit program.

31.4(1) Sources shall comply with the requirements of Section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in 31.3(1). The definitions in 31.3(1) for “major stationary source” and “major modification” planning to locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, apply when that source or modification would cause or contribute to a violation of any national ambient air quality standard.

31.4(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO ₂	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
PM ₁₀	1.0 µg/m ³	5 µg/m ³			
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			0.5 mg/m ³		2 mg/m ³

31.4(3) A proposed major source or major modification subject to this rule may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the proposed construction permit application shall be denied.

31.4(4) The requirements of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the Act.

567—31.5 to 31.8 Reserved.

567—31.9(455B) Actuals PALs. Except as provided in 31.9(1), the provisions for actuals PALs as specified in 40 CFR §51.165(f) as amended through March 30, 2011, are adopted by reference.

31.9(1) The following portions of actuals PALs in 40 CFR §51.165(f) are modified to read as follows:

a. 40 CFR §51.165(f)(2): Definitions. The definitions in paragraphs (f)(2)(i) through (xi) of this section shall be applicable to actuals PALs for purposes of paragraphs (f)(1) through (15) of this section. Any terms not defined in paragraphs (f)(2)(i) through (xi) shall have the meaning prescribed by 567—31.3(455B) or the meaning prescribed by the Act.

b. 40 CFR §51.165(f)(8)(ii)(B): The reviewing authority shall have discretion to reopen the PAL

permit for the following:

c. 40 CFR §51.165(f)(10)(ii): Application deadline. A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. In order to be considered timely, the application shall be submitted at least 6 months prior to, but not earlier than 18 months prior to, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

d. 40 CFR §51.165(f)(15)(i): Each PAL shall comply with the requirements contained in paragraphs (f)(1) through (15) of this section.

e. 40 CFR §51.165(f)(15)(ii): Any PAL issued prior to January 15, 2014, may be superseded with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

31.9(2) Reserved.

567—31.10(455B) Validity of rules. If any provision of 567—31.3(455B) through 567—31.9(455B), or the application of such provision to any person or circumstance, is held invalid, the remainder of these rules, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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

Iowa Department of Natural Resources
Environmental Protection Commission

Decision Item (**indicates proposed consent item*)

***23. Chapter 33, “Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD)” – Final Rule**

The Commission is requested to approve the Final Rule to rescind Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources — Prevention of Significant Deterioration (PSD) of Air Quality,” and replace it with a new Chapter 33, “Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD).” This final rule is the result of the Air Quality Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: New Chapter 33 includes updated rules for the preconstruction permitting program applicable to new or modified major stationary sources of air pollutants in areas that are meeting the National Ambient Air Quality Standards (NAAQS). The PSD permits help ensure that large facilities with higher emitting equipment continue to meet the NAAQS and other associated requirements to protect Iowa’s air quality while allowing economic growth to continue. New Chapter 33 provides businesses and the public with a dedicated chapter containing the streamlined and up-to-date PSD permit requirements.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7223C. Public hearings were held on January 29 and January 30, 2024.

Changes from NOIA: Eight people attended the public hearings. No public comments were received. The final rule is identical to the NOIA.

Effective Date of Final Rule: June 19, 2024

Christine Paulson, Environment Specialist Senior
Air Quality Bureau, Program Development and Support Section
Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 33 – Final rule

ENVIRONMENTAL PROTECTION COMMISSION [567]**Adopted and Filed**

The Environmental Protection Commission (Commission) hereby rescinds Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” and adopts a new Chapter 33, “Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD),” Iowa Administrative Code.

Legal Authority for Rulemaking

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

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.7 and Executive Order 10 (January 10, 2023).

Purpose and Summary

The Commission hereby rescinds and adopts a new Chapter 33. The new Chapter 33 includes updated and streamlined rules for the Prevention of Significant Deterioration (PSD).

The PSD program establishes the requirements for the preconstruction permitting program applicable to new or modified major stationary sources of air pollutants. These requirements are established under the U.S. Clean Air Act, Section 110(a)(2)(C) (42 USC §7410), and Iowa Code section 455B.133 to prevent significant deterioration of air quality. The PSD permits help ensure that large facilities with higher emitting equipment meet the National Ambient Air Quality Standards and other associated requirements to protect Iowa’s air quality while allowing economic growth to continue.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7223C**.

Public hearings were held by virtual meeting/teleconference on January 29 and January 30, 2024. Eight people attended the public hearings. No oral or written 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 April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Natural Resources (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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33

CONSTRUCTION PERMIT REQUIREMENTS FOR MAJOR STATIONARY SOURCES—
PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

567—33.1(455B) Purpose. This chapter implements the major new source review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment new source review (NNSR) program applies. The rules for the NNSR program are set forth in 567—Chapter 31. In areas that meet the NAAQS, the prevention of significant deterioration (PSD) program applies. Collectively, the NNSR and PSD programs are referred to as the major NSR program. An owner or operator required to apply for a construction permit under 567—Chapter 33 shall submit fees as specified in 567—Chapter 30.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions. An owner or operator requesting a PAL under 567—33.9(455B) shall submit fees as required in 567—Chapter 30.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22 and the rules for Title V operating permits in 567—Chapter 24.

567—33.2 Reserved.

567—33.3(455B) PSD construction permit requirements for major stationary sources.

33.3(1) Definitions. Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule and unless otherwise noted, the definitions herein apply.

Definitions that are adopted by reference from 40 CFR 51.166 or 52.21 are as amended through July 19, 2021, unless otherwise noted. The following phrases contained in 40 CFR 51.166 are not adopted by reference: “it shall also provide that,” “mechanism whereby,” “the plan may provide that,” “the plan provides that,” “the plan shall provide,” and “the plan shall provide that.” Additionally, the term “the plan” shall mean “State Implementation Plan” or “SIP.”

For purposes of this rule, the following terms have the meanings indicated in this subrule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

“*Actual emissions*” means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs “2” through “4,” except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 567—33.9(455B). Instead, the requirements specified under the definitions for “projected actual emissions” and “baseline actual emissions” shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Allowable emissions*” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;
2. The applicable SIP emissions limitation, including those with a future compliance date; or
3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“*Baseline actual emissions*,” for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as “regulated NSR pollutant” is defined in this subrule, and as determined in accordance with paragraphs “1” through “4.”

1. For any existing electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is

inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph “1”(b).

2. For an existing emissions unit, other than an electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if

required by paragraphs “2”(b) and “2”(c).

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit’s potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “1,” for other existing emissions units in accordance with the procedures contained in paragraph “2,” and for a new emissions unit in accordance with the procedures contained in paragraph “3.”

“*Baseline area*” means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (annual average) for sulfur dioxide (SO_2), nitrogen dioxide (NO_2) or PM_{10} ; or equal to or greater than 0.3 $\mu\text{g}/\text{m}^3$ (annual average) for $\text{PM}_{2.5}$.

2. Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA and published in 40 CFR Part 51, Subpart I, as amended through October 20, 2010, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of “baseline date” specified in this subrule.

“*Baseline concentration*” means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline

date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph “2”;

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

“Baseline date” means:

1. Either “major source baseline date” or “minor source baseline date” as follows:

(a) The “major source baseline date” means, in the case of PM₁₀ and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of PM_{2.5}, October 20, 2010.

(b) The “minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through October 20, 2010, or subject to this rule (PSD program requirements), or subject to a department rule approved by EPA and published in 40 CFR Part 51, Subpart I, as amended through October 20, 2010, submits a complete application under the relevant regulations. The trigger date for PM₁₀ and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988. For PM_{2.5}, the trigger date is October 20, 2011.

2. The “baseline date” is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through October 20, 2010, or under regulations specified

in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

“Begin actual construction” means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, that mark the initiation of the change.

“Best available control technology” or *“BACT”* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not adopted by the state. If the department determines that technological or economic limitations on the application of measurement

methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means that achieve equivalent results.

“Building, structure, facility, or installation” means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

“CFR” means the Code of Federal Regulations, with standard references in this chapter by title and part, so that “40 CFR 51” or “40 CFR Part 51” means “Title 40 Code of Federal Regulations, Part 51.”

“Clean coal technology” means the definition of “clean coal technology” set forth in 40 CFR 52.21(b)(34) and is adopted by reference.

“Clean coal technology demonstration project” means the definition of “clean coal technology demonstration project” set forth in 40 CFR 52.21(b)(35) and is adopted by reference.

“Commence,” as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“Complete” means, in reference to an application for a permit, that the application contains all the

information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

“*Construction*” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

“*Continuous emissions monitoring system*” or “*CEMS*” means the definition of “continuous emissions monitoring system” set forth in 40 CFR 52.21(b)(44) and is adopted by reference.

“*Continuous emissions rate monitoring system*” or “*CERMS*” means the definition of “continuous emissions rate monitoring system” set forth in 40 CFR 52.21(b)(47) and is adopted by reference.

“*Continuous parameter monitoring system*” or “*CPMS*” means the definition of “continuous parameter monitoring system” set forth in 40 CFR 52.21(b)(46) and is adopted by reference.

“*Electric utility steam generating unit*” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“*Emissions unit*” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.
2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph “1.” A replacement unit is an existing emissions unit.

“*Enforceable permit condition*,” for the purpose of this chapter, means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR

52.21 or Part 51, Subpart I, as amended through October 20, 2010, or under construction or Title V operating permit rules.

“Federal land manager” means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

“Federally enforceable” means all limitations and conditions that are enforceable by the Administrator and the department, including those federal requirements not adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

“Fugitive emissions” means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

“High terrain” means any area having an elevation 900 feet or more above the base of the stack of a source.

“Indian governing body” means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

“Indian reservation” means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

“Innovative control technology” means the definition of “innovative control technology” set forth in 40 CFR 52.21(b)(19) and is adopted by reference.

“Lowest achievable emissions rate” or *“LAER”* means the definition of “lowest achievable emissions rate” or “LAER” set forth in 40 CFR 52.21(b)(53) and is adopted by reference.

“Low terrain” means any area other than high terrain.

“Major modification” means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a

significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_x shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition that was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any

regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under 567—33.9(455B) shall apply.

“*Major source baseline date*” is defined under the definition of “baseline date.”

“*Major stationary source*” means:

1. (a) Any one of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- Coal cleaning plants (with thermal dryers);
- Kraft pulp mills;
- Portland cement plants;
- Primary zinc smelters;
- Iron and steel mill plants;
- Primary aluminum ore reduction plants;
- Primary copper smelters;
- Municipal incinerators capable of charging more than 50 tons of refuse per day;
- Hydrofluoric, sulfuric, and nitric acid plants;
- Petroleum refineries;
- Lime plants;
- Phosphate rock processing plants;
- Coke oven batteries;
- Sulfur recovery plants;
- Carbon black plants (furnace process);

- Primary lead smelters;
- Fuel conversion plants;
- Sintering plants;
- Secondary metal production plants;
- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140);

- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- Taconite ore processing plants;
- Glass fiber processing plants; and
- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph “1”(a), any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

2. A major source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

3. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph “1”(a) or to any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

“*Minor source baseline date*” is defined under the definition of “baseline date.”

“*Necessary preconstruction approvals or permits*” means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of

the SIP.

“*Net emissions increase*” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under 33.3(2); and
- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of “net emissions increase” shall be determined as provided for under the definition of “baseline actual emissions,” except that paragraphs “1”(c) and “2”(d) of the definition of “baseline actual emissions,” which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph “1” of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

- (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
- (b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and
- (c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of “actual emissions,” paragraph “2,” shall not apply for determining creditable increases and decreases.

“*Nonattainment area*” means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

“*Permitting authority*” means the Iowa department of natural resources or the director thereof.

“*Pollution prevention*” means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. “Pollution prevention” does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

“*Potential to emit*” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

“*Predictive emissions monitoring system*” or “*PEMS*” means the definition of “predictive emissions

monitoring system” set forth in 40 CFR 52.21(b)(45) and is adopted by reference.

“*Prevention of significant deterioration (PSD) program*” means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

“*Project*” means a physical change in, or change in method of operation of, an existing major stationary source.

“*Projected actual emissions,*” for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, “regular” shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and
2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and
3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
4. In lieu of using the method set out in paragraphs “1” through “3,” may elect to use the emissions

unit's potential to emit, in tons per year.

“Reactivation of a very clean coal-fired electric utility steam generating unit” means the definition of “reactivation of a very clean coal-fired electric utility steam generating unit” set forth in 40 CFR 52.21(b)(38) and is adopted by reference.

“Regulated NSR pollutant” means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas;

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient PM_{2.5} concentrations;

(d) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment and unclassifiable areas, unless the department demonstrates to EPA's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations;

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of “subject to regulation.”

5. Notwithstanding paragraphs “1” through “4,” the definition of “regulated NSR pollutant” shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act,

unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

6. Particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

“Replacement unit” means an emissions unit for which all the criteria listed in paragraphs “1” through “4” are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

“Repowering” means the definition of “repowering” set forth in 40 CFR 52.21(b)(37) and is adopted by reference.

“Reviewing authority” means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

“Secondary emissions” means emissions that occur as a result of the construction or operation of a major stationary source or major modification but do not come from the major stationary source or major modification itself. For the purposes of this chapter, “secondary emissions” must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification that causes the secondary emissions. “Secondary emissions” includes emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. “Secondary emissions” does not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

“*Significant*” means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions
- PM10: 15 tpy
- PM2.5: 10 tpy of direct PM2.5 emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions (unless the department demonstrates to EPA’s satisfaction that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area’s ambient PM2.5 concentrations)
- Ozone: 40 tpy of volatile organic compounds or NOx
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H2S): 10 tpy
- Total reduced sulfur (including H2S): 10 tpy
- Reduced sulfur compounds (including H2S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{-6} megagrams per year (3.5×10^{-6} tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds):

45 megagrams per year (50 tons per year)

2. “Significant” means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph “1,” any emissions rate.

3. Notwithstanding paragraph “1,” “significant,” for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within ten kilometers of a Class I area and have an impact on such area equal to or greater than 1 µg/m³ (24-hour average).

“*Significant emissions increase*” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

“*State implementation plan*” or “*SIP*” means the plan adopted by the state of Iowa and approved by the Administrator that provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Act, or a nationally applicable regulation codified by the Administrator and published in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) (as amended through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph “4,” and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs “3” and “4,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall

represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended through December 24, 2014). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

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

3. The term “emissions increase,” as used in this paragraph and in paragraph “4,” shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2) “c” through “h”) and a significant net emissions increase (as specified in 33.3(1), in the definitions of “net emissions increase” and “significant”) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and “significant” is defined as 75,000 tpy CO₂e rather than calculated by applying the value specified in 33.3(1), in paragraph “2” of the definition of “significant.”

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO₂e or more.

“*Temporary clean coal technology demonstration project*” means the definition of “temporary clean coal technology demonstration project” set forth in 40 CFR 52.21(b)(36) and is adopted by reference.

“*Title V permit*” means an operating permit under Title V of the Act.

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR 51.100(s) as amended through February 8, 2023.

33.3(2) Applicability. The requirements of this rule (PSD program requirements) apply to the construction of any new “major stationary source” as defined in 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act.

In addition to the provisions set forth in 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through January 17, 2017, are adopted by reference. Provisions set forth in 567—33.3(455B) through 567—33.9(455B) that are adopted by reference from 40 CFR 51.166 or 52.21 are as amended through July 19, 2021, unless otherwise noted. The following phrases contained in 40 CFR 51.166 are not adopted by reference: “it shall also provide that,” “mechanism whereby,” “the plan may provide that,” “the plan provides that,” “the plan shall provide,” and “the plan shall provide that.” Additionally, the term “the plan” shall mean “State Implementation Plan” or “SIP.”

a. The requirements of 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

b. No new major stationary source or major modification to which the requirements of 33.3(10) through 33.3(18) “*e*” apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in 33.3(2) “*i*” and “*j*,” and consistent with the definition of “major modification” contained in 33.3(1), a project is a major modification for a “regulated NSR pollutant” if it causes two types of emissions increases: a “significant emissions increase” and a “net emissions increase” that is “significant.” The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant

emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs 33.3(2) “e” through “h” of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of “net emissions increase.” Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

e. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “projected actual emissions” and the “baseline actual emissions” for each existing emissions unit equals or exceeds the significant amount for that pollutant.

f. Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “potential to emit” from each new emissions unit following completion of the project and the “baseline actual emissions” for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

g. Reserved.

h. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs 33.3(2) “e” through “g” of this subrule, as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

i. For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with rule requirements under 567—33.9(455B).

j. Reserved.

33.3(3) *Ambient air increments.* The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through October 20, 2010, are adopted by reference.

33.3(4) *Ambient air ceilings.* The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) are

adopted by reference.

33.3(5) *Restrictions on area classifications.* The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) are adopted by reference.

33.3(6) *Exclusions from increment consumption.* The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) are adopted by reference.

33.3(7) *Redesignation.* The provisions for redesignation as specified in 40 CFR 52.21(g) are adopted by reference.

33.3(8) *Stack heights.* The provisions for stack heights as specified in 40 CFR 52.21(h) are adopted by reference.

33.3(9) *Exemptions.* The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) are adopted by reference.

33.3(10) *Control technology review.* The provisions for control technology review as specified in 40 CFR 52.21(j) are adopted by reference.

33.3(11) *Source impact analysis.* The provisions for a source impact analysis as specified in 40 CFR 52.21(k) are adopted by reference.

33.3(12) *Air quality models.* The provisions for air quality models as specified in 40 CFR 52.21(l) are adopted by reference.

33.3(13) *Air quality analysis.* The provisions for an air quality analysis as specified in 40 CFR 52.21(m) are adopted by reference.

33.3(14) *Source information.* The provisions for providing source information as specified in 40 CFR 52.21(n) are adopted by reference.

33.3(15) *Additional impact analyses.* The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) are adopted by reference.

33.3(16) *Sources impacting federal Class I areas—additional requirements.* The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) are adopted by reference.

33.3(17) Public participation.

a. The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

b. Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by posting on a publicly available website identified by the department, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. The electronic notice shall be available for the duration of the public comment period and shall include the notice of public comment, the draft permit(s), information on how to access the administrative record for the draft permit(s) and how to request or attend a public hearing on the draft permit(s). The department may use other means if necessary to ensure adequate notice to the affected public. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for

any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

c. Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;
2. Prepare a revised fact sheet;
3. Prepare a revised fact sheet and reopen the public comment period; or
4. Reopen or extend the public comment period to provide interested persons an opportunity

to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

33.3(18) *Source obligation.*

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7,

1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

c. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa’s PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

d. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

e. Reserved.

f. Except as otherwise provided in subparagraph (8), the following specific provisions shall apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a “reasonable possibility,” within the meaning of subparagraph (8), that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method for calculating projected actual emissions as specified in 33.3(1), paragraphs “1” through “3” of the definition of “projected actual emissions.”

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could

be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph “3” of the definition of “projected actual emissions” in 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner’s or operator’s determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in 33.3(18) “f.” The owner or operator is not required to obtain a determination from the department regarding the project’s projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, “regular” shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a

report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is "significant" as defined in 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;
2. The annual emissions as calculated pursuant to subparagraph (4); and
3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(8) A "reasonable possibility" under this paragraph (33.3(18) "f") occurs when the owner or operator calculates the project to result in either:

1. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
2. A projected actual emissions increase that, when added to the amount of emissions excluded under 33.3(1), paragraph "3" of the definition of "projected actual emissions," equals at least 50 percent of the amount that is a "significant emissions increase," as defined under 33.3(1) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this numbered paragraph, and not also within the meaning of numbered paragraph "1" of this subparagraph (subparagraph (8)), then the provisions of subparagraphs (3) through (7) do not apply to the project.

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph 33.3(18) “f” available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

33.3(19) Innovative control technology. The provisions for innovative control technology as specified in 40 CFR 51.166(s) are adopted by reference.

33.3(20) Conditions for permit issuance. Except as explained below, a permit may not be issued to any new “major stationary source” or “major modification” as defined in 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Averaging Time				
	Annual	24 hrs.	8 hrs.	3 hrs.	1 hr.
Pollutant	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)	($\mu\text{g}/\text{m}^3$)
SO ₂	1.0	5	—	25	—
PM ₁₀	1.0	5	—	—	—
PM _{2.5}	0.3	1.2	—	—	—
NO ₂	1.0	—	—	—	—
CO	—	—	500	—	2,000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major modification with respect to a particular pollutant if

the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

33.3(21) Administrative amendments.

a. Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to 33.3(21).

b. An administrative amendment is a permit revision that does any of the following:

- (1) Corrects typographical errors;
- (2) Corrects word processing errors;
- (3) Identifies a change in name, address or telephone number of any person identified in the

permit or provides a similar minor administrative change at the source; or

(4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

33.3(22) Permit rescission. Any permit issued under 40 CFR 52.21 or this chapter or any permit issued under 567—22.4(455B) shall remain in effect unless and until it expires or is rescinded under 40 CFR 52.21(w) or this chapter. The provisions for permit rescission as set forth in 40 CFR 52.21(w) are adopted by reference. The department will consider requests for rescission that meet the conditions specified in this subrule. If the department rescinds a permit or a condition in a permit issued under 40 CFR 52.21, this chapter, or 567—22.4(455B), the public shall be given adequate notice of the proposed rescission. Posting of an announcement of rescission on a publicly available website identified by the department 60 days prior to the proposed date for rescission shall be considered adequate notice.

567—33.4 to 33.8 Reserved.

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the

option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) are adopted by reference, except that the term “Administrator” shall mean “the department of natural resources.”

567—33.10(455B) Exceptions to adoption by reference. All references to Clean Units and Pollution Control Projects set forth in 40 CFR 51.166 and 52.21 are not adopted by reference.

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

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

Decision Item

24. Chapter 65, “Animal Feeding Operations” – Final Rule

The Commission is requested to approve the Final rule to rescind and replace Chapter 65, “Animal Feeding Operations.” This final rule is the result of Field Services & Compliance Bureau’s Executive Order 10 rule review.

Basic Intent of Rule: Chapter 65 regulates animal feeding operations (AFOs). The chapter regulates the siting, construction, and operation of all types of AFO structures and associated facilities. This rulemaking reduces and consolidates the AFO regulations. This is accomplished by rescinding redundant or outdated provisions. The rules also adopt a floodplain siting map as required by state law.

The new chapter makes the rules more intuitive and easier to read and understand. For example, rules applicable to all AFOs have been consolidated into a single division rather than repeated multiple times throughout the chapter. Rules have been streamlined as much as possible, stating the requirements more succinctly and clearly. Antiquated rules have been removed.

NOIA: The Notice of Intended Action (NOIA) was approved by the Commission on November 21, 2023. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7214C. Two public hearings were held on February 14, 2024 and February 19, 2024.

Changes from NOIA: The Response to Comments is attached and contains the following information: 1) comments/summary of comments received; 2) response to comments; 3) a list of those who submitted written comments; and 4) a list of those who attended the public hearings.

Based on the comments received, the following changes were made from the published NOIA:

- 1) Properly alphabetized the definitions section. (65.1)
- 2) Added the term “substantially” to the definition of complete application. (65.1)
- 3) Moved the definition of “New AFO” from the definition section to the body of the rule where the term is used. (65.1 and 65.202(3))
- 4) Removed the term “manure storage structure” from the definition of “Partially Roofed” because “manure storage structure” is already in the definition of “production area” referenced in the definition of “Partially Roofed.” (65.1)
- 5) Revised the definition of “Sinkhole” to address DNR technical staff recommendation. (65.1)
- 6) For documents that reference a website, created static lists of the county parks and recreational areas and the parks under federal jurisdiction. (65.1(2)“d” and “e”)
- 7) Amended the depth of the coring in potential karst terrain to a minimum depth of 7 feet. (65.7(1)“b”)
- 8) Added a provision for persons in one of the five counties that do not have a FEMA Flood Rate Insurance Map to contest a 100-year floodplain determination for construction. (65.9(1))
- 9) Reverted to the original language to require County Board of Supervisors to sign up annually to score Master Matrix construction permit applications. (65.105(3)“a”)
- 10) Clarified language regarding Manure Management Plans where only a portion of the manure is sold. (65.111(2))
- 11) Amended language for evaluating sheet and rill erosion based on technical advice from NRCS. (65.111(12)“a”)
- 12) Clarified language to allow DNR to use the confinement portion of the rules to calculate nitrogen and phosphorus in an NMP. (65.209(8)“a”)
- 13) Clarified language for IDALS’ 200 and 200A allowances in MMPs and NMPs. (65.111(15) and 65.209(8)“f”)
- 14) Provided clarifying language to 65.108(6)“b”(2) and 65.108(10) based on staff technical recommendations.

Effective Date of Final Rule: June 19, 2024

Jason Marcel, Field Services & Compliance Bureau Chief

Environmental Services Division
Meeting Date: April 16, 2024

Attached: Chapter 65, “Animal Feeding Operations” – Final rule and Response to Comments

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

The Environmental Protection Commission hereby rescinds Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code, and adopts a new chapter with the same name.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 459.103, 459.301, 459A.104 and 459B.104.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 455B.103, 455B.134, 455B.171, 459.103, 459.301, 459A.104 and 459B.104.

Purpose and Summary

Chapter 65 regulates animal feeding operations (AFOs). The chapter regulates the siting, construction, and operation of all types of AFO structures and associated facilities. This rulemaking reduces and consolidates the AFO regulations. This is accomplished by rescinding redundant or outdated provisions. The rules also adopt a floodplain siting map as required by state law.

The new chapter makes the rules more intuitive and easier to read and understand. For example, rules applicable to all AFOs have been consolidated into a single division rather than repeated multiple times throughout the chapter. Rules have been streamlined as much as possible, stating the requirements more succinctly and clearly. Antiquated rules have been removed.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7214C**.

Two public hearings were held with the first public hearing in person at the Wallace State Office Building on February 14, 2024 at 1:30. The second public hearing was held by Zoom on February 19, 2024 at 1:30. The response to comments is attached and contains the following information: 1) comments/summary of comments received; 2) response to comments; 3) a list of those who submitted written comments; and 4) a list of those who attended the public hearings.

Based on the comments received, the following changes were made from the published Notice of Intended Action:

Based on the comments received, the following changes were made from the published NOIA:

- 1) Properly alphabetized the definitions section. (65.1)
- 2) Added the term “substantially” to the definition of complete application. (65.1)
- 3) Moved the definition of “New AFO” from the definition section to the body of the rule where the term is used. (65.1 and 65.202(3))
- 4) Removed the term “manure storage structure” from the definition of “Partially Roofed” because “manure storage structure” is already in the definition of “production area” referenced in the definition of “Partially Roofed.” (65.1)
- 5) Revised the definition of “Sinkhole” to address DNR technical staff recommendation. (65.1)
- 6) For documents that reference a website, created static lists of the county parks and recreational areas and the parks under federal jurisdiction. (65.1(2)”d” and ”e”)
- 7) Amended the depth of the coring in potential karst terrain to a minimum depth of 7 feet. (65.7(1)”b”)

- 8) Added a provision for persons in one of the five counties that do not have a FEMA Flood Rate Insurance Map to contest a 100-year floodplain determination for construction. (65.9(1))
- 9) Reverted to the original language to require County Board of Supervisors to sign up annually to score Master Matrix construction permit applications. (65.105(3)"a")
- 10) Clarified language regarding Manure Management Plans where only a portion of the manure is sold. (65.111(2))
- 11) Amended language for evaluating sheet and rill erosion based on technical advice from NRCS. (65.111(12)"a")
- 12) Clarified language to allow DNR to use the confinement portion of the rules to calculate nitrogen and phosphorus in an NMP. (65.209(8)"a")
- 13) Clarified language for IDALS' 200 and 200A allowances in MMPs and NMPs. (65.111(15) and 65.209(8)"f")
- 14) Provided clarifying language to 65.108(6)"b"(2) and 65.108(10) based on staff technical recommendations.

Adoption of Rulemaking

This rulemaking was adopted by the Environmental Protection Commission on April 16, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 567—Chapter 65 and adopt the following **new** chapter in lieu thereof:

CHAPTER 65
ANIMAL FEEDING OPERATIONS

DIVISION I
GENERAL PROVISIONS

The provisions in Division I apply to all confinement feeding operations, open feedlot operations, animal truck washes, dry bedded confinement feeding operations, and associated manure and waste storage structures, unless otherwise noted in this chapter.

The following acronyms will be used throughout this chapter:

- “*AFO*” means animal feeding operation.
- “*CAFO*” means concentrated animal feeding operation.
- “*MMP*” means manure management plan.
- “*NMP*” means nutrient management plan.
- “*NPDES*” means National Pollutant Discharge Elimination System.

567—65.1(455B,459,459A,459B) Definitions and incorporation by reference. In addition to the definitions in Iowa Code sections 455B.101, 455B.171, 459.102, 459A.102, and 459B.102 and in 567—Chapter 60, the following definitions shall apply to this chapter:

65.1(1) Definitions.

“*Abandoned AFO structure*” means the AFO structure has been razed, removed from the site of an AFO, filled in with earth, or converted to uses other than an AFO structure so that it cannot be used as an AFO structure without significant reconstruction.

“*Adjacent*” for open feedlot operation. Two or more open feedlot operations are defined as adjacent if both of the following occur:

1. At least one open feedlot operation structure is constructed on or after July 17, 2002; and
2. An open feedlot operation structure that is part of one open feedlot operation is separated by less than 1,250 feet from an open feedlot operation structure that is part of the other open feedlot operation.

“*Adjacent—air quality*” for confinement feeding operations means, for the purpose of determining separation distance requirements pursuant to rule 567—65.106(455B,459,459B), that two or more confinement feeding operations are adjacent if they have AFO structures that are separated at their closest points by less than the following:

1. 1,250 feet for a confinement feeding operation having an animal unit capacity of less than 1,250 animal units for swine maintained as part of a farrowing and gestating operation, less than 2,700 animal units for swine maintained as part of a farrow-to-finish operation, less than 4,000 animal units for cattle maintained as part of a cattle operation, or less than 3,000 animal units for any other confinement feeding operation, or for a confinement feeding operation consisting of dry bedded confinement feeding operation structures.

2. 1,500 feet for a confinement feeding operation having an animal unit capacity of 1,250 or more but less than 2,000 animal units for swine maintained as part of a swine farrowing and gestating operation, 2,700 or more but less than 5,400 animal units for swine maintained as part of a farrow-to-finish operation, 4,000 or more but less than 6,500 animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation having an animal unit capacity of 3,000 or more but less than 5,000 animal units.

3. 2,500 feet for a confinement feeding operation having an animal unit capacity of 2,000 or more animal units for swine maintained as part of a swine farrowing and gestating operation, 5,400 or more animal units for swine maintained as part of a farrow-to-finish operation, or 6,500 or more animal units for cattle maintained as part of a cattle operation, or for any other confinement feeding operation with 5,000 or more animal units.

The distances in paragraphs “1” to “3” above shall only be used to determine that two or more confinement feeding operations are adjacent if at least one confinement feeding operation structure was constructed on or after March 21, 1996.

To determine if two or more confinement feeding operations are adjacent, for the purpose of determining the separation distance requirements, the animal unit capacity of each individual operation shall be used. If two or more confinement feeding operations do not have the same animal unit capacity, the greater animal unit capacity shall be used to determine the separation distance.

Dry manure that is stockpiled within a distance of 1,250 feet from another stockpile shall be considered part of the same stockpile.

“*Adjacent—water quality*” for confinement feeding operations means, for the purpose of determining the construction permit requirements pursuant to rule 567—65.103(455B,459,459B) and MMP requirements pursuant to rule 567—65.110(455B,459,459B), that two or more confinement feeding operations are adjacent if they have confinement feeding operation structures that are separated at their closest points by less than the following:

1. 1,250 feet for confinement feeding operations having a combined animal unit capacity of less than 1,000 animal units.

2. 2,500 feet for confinement feeding operations having a combined animal unit capacity of 1,000 or more animal units.

3. The distances in paragraphs “1” and “2” above shall only be used to determine that two or more confinement feeding operations are adjacent if at least one confinement feeding operation structure is constructed or expanded on or after May 21, 1998.

“*Aerobic structure*” means an AFO structure other than an egg washwater storage structure which relies on aerobic bacterial action which is maintained by the utilization of air or oxygen and which includes aeration

equipment to digest organic matter. Aeration equipment shall be used and shall be capable of providing oxygen at a rate sufficient to maintain an average of 2 milligrams per liter dissolved oxygen concentration in the upper 30 percent of the depth of manure in the structure at all times.

“AFO structure” means a confinement building, manure storage structure, dry bedded confinement feeding operation structure, or egg washwater storage structure.

“Agricultural drainage well” means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, coring, augering, jetting, or washing and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

“Agricultural drainage well area” means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

“Alluvial aquifer area” means an area underlaid by sand or gravel aquifers situated beneath floodplains along stream valleys and includes alluvial deposits associated with stream terraces and benches, contiguous windblown sand deposits, and glacial outwash deposits.

“Alluvial soils” means soils formed in materials deposited by moving water.

“Alternative technology settled open feedlot effluent control system” or *“AT system”* means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent.

“Anaerobic digester system” or *“digester”* means a manure storage structure that is covered if the primary function of the manure storage structure is to process manure by employing environmental conditions including bacteria to break down organic matter in the absence of oxygen, and the structure is used for producing, collecting, and utilizing a biogas.

“Anaerobic lagoon” means an unformed manure storage structure if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure’s design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include the following:

1. A runoff control basin or a settled open feedlot effluent basin that collects and stores only precipitation-induced runoff from an open feedlot operation.
2. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

“Animal” means cattle, swine, horses, sheep, chickens, turkeys, goats, fish, or ducks.

“Animal capacity” means the maximum number of animals that the owner or operator will confine in an AFO at any one time. The animal capacity shall be what is currently approved or permitted on the site and is listed in the MMP or NMP, unless a portion of the facility has been properly closed or taken out of operation through the small AFO election as provided in paragraph 65.110(1)“f.” In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned, in accordance with the definition of “abandoned AFO structure.”

“Animal feeding operation” or *“AFO”* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the Act, an AFO does not include a livestock market. Open feedlot operations and confinement feeding operations are considered to be separate AFOs.

“Animal truck wash effluent” means a combination of manure, washwater-induced runoff, or other runoff derived from an animal truck wash facility, which may include solids.

“Animal truck wash effluent structure” means an impoundment that is part of an animal truck wash facility, if the primary function of the impoundment is to collect and store animal truck wash effluent.

“Animal truck wash facility” means an operation engaged solely in washing single-unit trucks, truck-tractors, semitrailers, or trailers used to transport animals. An animal truck wash facility is considered to be part of an AFO if the animal truck wash facility and the AFO are under common ownership or management and the animal truck wash facility is located within 1,250 feet of the AFO.

“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of

each category by a special equivalency factor, as follows:

1. Slaughter and feeder cattle.....	1.00
2. Immature dairy cattle	1.00
3. Mature dairy cattle	1.400
4. Butcher or breeding swine weighing more than 55 pounds	0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds	0.100
6. Sheep or lambs	0.100
7. Goats	0.100
8. Horses	2.00
9. Turkeys weighing 7 pounds or more	0.018
10. Turkeys weighing less than 7 pounds	0.0085
11. Broiler or layer chickens weighing 3 pounds or more.....	0.010
12. Broiler or layer chickens weighing less than 3 pounds.....	0.0025
13. Ducks	0.040
14. Fish weighing 25 grams or more.....	0.001
15. Fish weighing less than 25 grams.....	0.00006

“*Animal unit capacity*” means a measurement used to determine the maximum number of animal units that may be maintained as part of an AFO at any one time, including as provided in Iowa Code sections 459.201, 459.301, and 459A.103. For dry bedded confinement feeding operations, “animal unit capacity” means the maximum number of animal units that the owner or operator confines in a dry bedded confinement feeding operation at any one time, including the animal unit capacity of all dry bedded confinement feeding operation buildings that are used to house cattle or swine in the dry bedded confinement feeding operation. For purposes of determining whether an open feedlot operation must obtain an NPDES permit, the animal unit capacity of the AFO shall include the animal unit capacities of both the open feedlot operation and any adjacent confinement feeding operation if all of the following occur:

1. The animals in the open feedlot operation and any adjacent confinement feeding operation are all in the same category of animals as used in the definitions of “large CAFO” and “medium CAFO” in 40 CFR Part 122;
2. The closest open feedlot operation structure is separated by less than 1,250 feet from the closest confinement feeding operation structure; and
3. The open feedlot operation and the confinement feeding operation are under common ownership or management.

“*Animal weight capacity*” means the sum of the average weight of all animals in a confinement feeding operation when the operation is at full animal capacity. For confinement feeding operations with only one species, the animal weight capacity is the product of multiplying the animal capacity by the average weight during a production cycle. For operations with more than one species, the animal weight capacity of the operation is the sum of the animal weight capacities for all species. This definition applies to confinement feeding operations constructed prior to March 1, 2003.

“*Applicant*” means the person applying for a construction permit or an NPDES permit for an AFO.

“*Bedding*” means crop, vegetation, sand, or forage residue or similar materials placed in a dry bedded confinement building for the care of animals.

“*Business*” means a commercial enterprise.

“*Cemetery*” means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity or a cemetery regulated pursuant to Iowa Code chapter 523I. A cemetery does not include a pioneer cemetery as defined by Iowa Code section 331.325.

“*Church*” means a religious institution.

“*Commercial enterprise*” means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

“*Commercial manure service*” means a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee.

“*Commercial manure service representative*” means a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service.

“*Common management*” means significant control by an individual of the management of the day-to-day operations of each of two or more AFOs. “Common management” does not include control over a contract livestock facility by a contractor as defined in Iowa Code section 202.1.

“*Common ownership*” for confinement feeding operations means the ownership of a confinement feeding operation as a sole proprietor, or a 10 percent or more ownership interest held by a person, in each of two or more confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. The following exceptions shall apply to this definition:

1. For a confinement feeding operation structure constructed before [the effective date of these rules] that has not been expanded, “common ownership” means the ownership of a confinement feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. This exception shall not apply to a confinement feeding structure or operation expanded after [the effective date of these rules], instead, the 10 percent or more ownership interest standard shall apply.

2. This definition shall not apply to a dry bedded confinement feeding operation that is subject to the common ownership requirements in Iowa Code section 459B.103(3) “a”(3) nor to an open feedlot operation as defined in this rule.

“Common ownership” for open feedlot operations means to hold an interest in each of two or more open feedlot operations as any of the following:

1. A sole proprietor;
2. A joint tenant or tenant in common; or
3. A holder of a majority equity interest in a business association as defined in Iowa Code section 202B.102, including as a shareholder, partner, member, beneficiary, or other equity interest holder.

An interest in an open feedlot operation under paragraph “2” or “3” is a common ownership interest when it is held directly or indirectly through a spouse or dependent child, or both.

“*Complete application*” means an application that is substantially complete and approvable when all necessary questions on the application forms have been completed, the application is signed and all applicable portions of the application, including the application form, required attachments, and application fees, have been submitted.

“*Concentrated AFO*” or “*CAFO*” means an AFO that is a designated CAFO, or that is defined as a large CAFO or a medium CAFO as defined in 40 CFR 122.23(b).

“*Confinement feeding operation*” means an AFO in which animals are confined to areas that are totally roofed and includes an AFO that is not an open feedlot operation as defined in this chapter.

1. For purposes of water quality regulation, Iowa Code section 459.301 provides that two or more AFOs under common ownership or management are deemed to be a single AFO if they are adjacent or utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section 459.202, Iowa Code section 459.201 provides that two or more AFOs under common ownership or management are deemed to be a single AFO if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of AFOs for water quality purposes under the Act. 40 CFR 122.23 sets out the requirements for an AFO and requires that two or more AFOs under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for disposal of wastes. However, this federal regulation does not control regulation of AFOs for the purposes of the separation distances in Iowa Code section 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. To determine if two or more AFOs are deemed to be one AFO, the first test is whether the AFOs are under common ownership or management. If they are not under common ownership or management, they are not one AFO. For purposes of water quality regulation, the second test is whether the two AFOs are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one AFO. For purposes of the air quality-related separation distances in Iowa Code section 459.202, the second test is whether the two AFOs are adjacent or utilize a common system for manure storage. If the two operations are not adjacent and do not use the same system for manure storage, they are not one AFO.

3. A common area or system for manure disposal includes but is not limited to use of the same manure storage structure, confinement feeding operation structure, egg washwater storage structure, stockpile, permanent manure transfer piping system or center pivot irrigation system. A common area or system for manure disposal does not include manure application fields included in a manure management plan or anaerobic digester system.

“Confinement feeding operation building” or *“confinement building”* means a building used in conjunction with a confinement feeding operation to house animals.

“Confinement feeding operation structure” means an AFO structure that is part of a confinement feeding operation.

“Confinement site” means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a SAFO.

“Confinement site manure applicator” means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

“Construction approval letter” means a written document of the department to acknowledge that the preconstruction submittal requirements of rule 567—65.104(455B,459,459B) have been met for a confinement feeding operation that is not required to obtain a construction permit pursuant to rule 567—65.103(455B,459,459B).

“Construction design statement” means a document required to be submitted by a confinement feeding operation prior to constructing a formed manure storage structure, other than a SAFO, but that does not meet the threshold engineering requirements.

“Construction permit” means a written approval of the department to construct, modify or alter the use of an AFO structure as required by rules 567—65.103(455B,459,459B) and 567—65.203(455B,459A).

“Controlling interest” means ownership of a confinement feeding operation as a sole proprietor or a majority ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a controlling interest when it is held directly, indirectly through a spouse or dependent child, or both. The majority ownership interest must be a voting interest or otherwise control management of the confinement feeding operation.

“Covered” means organic or inorganic material, placed upon an AFO structure used to store manure, which significantly reduces the exchange of gases between the stored manure and the outside air. Organic materials include but are not limited to a layer of chopped straw, other crop residue, or a naturally occurring crust on the

surface of the stored manure. Inorganic materials include but are not limited to wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.

“*Critical public area*” means land that is owned or managed by the federal government, by the department, or by a political subdivision and that has unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system. Critical public areas include:

1. State wildlife and waterfowl refuges listed in 571—subrules 52.1(2) and 52.1(3);
2. Recreation areas, state parks, state parks managed by another governmental agency, and state preserves as listed in rule 571—61.2(461A);
3. County parks and recreation areas as provided in subrule 65.1(2);
4. National wildlife refuges listed as follows: Union Slough National Wildlife Refuge, DeSoto National Wildlife Refuge, Boyer Chute National Wildlife Refuge, Upper Mississippi River National Wildlife and Fish Refuge, Driftless Area National Wildlife Refuge, Neal Smith National Wildlife Refuge, and Port Louisa National Wildlife Refuge;
5. National monuments and national historic sites listed as follows: Effigy Mounds National Monument and Herbert Hoover National Historic Site;
6. Parks in Iowa that are under the federal jurisdiction listed with the United States Army Corps of Engineers as provided in subrule 65.1(2).

“*Cropland*” means any land suitable for use in agricultural production including but not limited to feed, grain and seed crops, fruits, vegetables, forages, sod, trees, grassland, pasture and other similar crops.

“*Deep well*” means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“*Designated area*” means a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. “Designated area” does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

“*Designated CAFO*” means an AFO that has been designated as a CAFO pursuant to rule 567—65.201(455B,459A).

“*Designated wetland*” means land designated as a protected wetland by the United States Department of the Interior or the department, including but not limited to a protected wetland as defined in Iowa Code section 456B.1, if the land is owned and managed by the federal government or the department. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district. Designated wetlands in the state are listed in the department’s “Designated Wetlands in Iowa” (more information is contained in subrule 65.1(2), incorporation by reference).

“*Discontinued AFO*” means an AFO whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator has no immediate plans to repopulate.

“*Discontinued AFO structure*” means an AFO structure that has been abandoned or whose use has been discontinued as evidenced by the removal of all animals from the structure and the owner or operator has no immediate plans to repopulate.

“*Document*” means any form required to be processed by the department under this chapter regulating AFOs, including but not limited to applications or related materials for permits as provided in Iowa Code section 459.303, MMPs as provided in Iowa Code section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department’s analysis of the application including using and responding to a master matrix pursuant to Iowa Code section 459.304, and notices required under those sections.

“*Dry bedded confinement feeding operation*” means a confinement feeding operation in which cattle or swine

are confined to areas which are totally roofed and in which all manure is stored as dry bedded manure. Unless specifically stated otherwise, all requirements in Divisions I and II of this chapter do apply to dry bedded confinement feeding operations.

“Dry bedded confinement feeding operation structure” means a dry bedded confinement feeding operation building or a dry bedded manure storage structure.

“Dry bedded manure” means manure from cattle or swine that meets all of the following requirements:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The manure contains bedding.

“Dry bedded manure confinement feeding operation building” or *“building”* means a building used in conjunction with a confinement feeding operation to house cattle or swine and in which any manure from the animals is stored as dry bedded manure.

“Dry bedded manure storage structure” means a covered or uncovered structure, other than a building, used to store dry bedded manure originating from a confinement feeding operation.

“Dry manure” means manure that meets all of the following conditions:

1. The manure does not flow perceptibly under pressure.
2. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the manure do not flow freely among themselves but may show a tendency to separate under stress.

“Dry manure” includes manure marketed as a bulk dry animal nutrient product that is stored 1,250 feet or less from the confinement animal feeding structure from which it originated.

“Earthen manure storage basin” means an earthen cavity, either covered or uncovered, that, on a regular basis, receives manure discharges from a confinement feeding operation if accumulated manure from the basin is completely removed at least once each year.

“Earthen waste slurry storage basin” means an uncovered and exclusively earthen cavity that, on a regular basis, receives manure discharges from a confinement AFO if accumulated manure from the basin is completely removed at least twice each year and that was issued a permit, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995.

“Educational institution” means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

“Egg washwater storage structure” means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs. It does not include a structure also used as a manure storage structure.

“Enforcement action” means an action against a person with a controlling interest in a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 459 or 459B or rules adopted pursuant to either chapter. An enforcement action begins when the attorney general institutes proceedings in district court pursuant to Iowa Code section 455B.112. An enforcement action is pending until final resolution of the action by satisfaction of a court order, for which all judicial appeal rights are exhausted, expired, or waived.

“Family member” means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such related person.

“Feed storage runoff basin” means a covered or uncovered impoundment with the primary function to collect and store runoff from a feed storage area.

“Formed animal truck wash effluent structure” means a covered or uncovered impoundment used to store effluent from an animal truck wash facility, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

“Formed manure storage structure” means a covered or uncovered impoundment used to store manure from

an AFO, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Subject to department approval, similar materials may include but are not limited to plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed manure storage structure shall have the structural integrity to withstand expected internal and external load pressures.

“Formed settled open feedlot effluent basin” means a settled open feedlot effluent basin which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include but are not limited to plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed settled open feedlot effluent basin shall have the structural integrity to withstand expected internal and external load pressures.

“Freeboard” means the difference in elevation between the liquid level and the confinement feeding operation structure’s overflow level.

“Frozen ground” means soil that is impenetrable due to frozen soil moisture but does not include soil that is only frozen to a depth of two inches or less.

“Grassed waterway” means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

“Highly erodible land” means a field that has one-third or more of its acres or 50 acres, whichever is less, with soils that have an erodibility index of eight or more, as determined by rules promulgated by the United States Department of Agriculture.

“Human sanitary waste” means wastewater derived from domestic uses including bathroom and laundry facilities generating wastewater from toilets, baths, showers, lavatories and clothes washing.

“Incidental” means a duty which is secondary or subordinate to a primary job or function.

“Incorporation” means a soil tillage operation following the surface application of manure which mixes the manure into the upper four inches or more of soil.

“Indemnity fund” means the livestock remediation fund created in Iowa Code section 459.501.

“Injection” means the application of manure into the soil surface using equipment that discharges it beneath the surface.

“Interest” means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse or dependent child, or both.

“Karst terrain” means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

“Known sinkhole” means a sinkhole that has been included in the department’s sinkhole coverage and displayed in the AFO Siting Atlas or a sinkhole known to the applicant.

“Liquid manure” means manure that meets all of the following requirements:

1. The manure flows perceptibly under pressure.
2. The manure is capable of being transported through a mechanical pumping device designated to move a liquid.
3. The constituent molecules of the liquid manure flow freely among themselves and show a tendency to separate under stress.

Liquid manure that is frozen or partially frozen is included in this definition.

“Livestock market” means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

“Long-term stockpile location” means an area where a person stockpiles manure for more than a total of six months in any two-year period.

“Low-pressure irrigation system” means spray irrigation equipment that discharges manure from a maximum height of nine feet in a downward direction and that utilizes spray nozzles that discharge manure at a maximum pressure of 25 pounds per square inch.

“Major water source” means a water source that is a lake, reservoir, river or stream located within the

territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at iowadnr.gov/af0/rules (more information is contained in subrule 65.1(2), incorporation by reference).

“*Manager*” means a person who is actively involved in the operation of the commercial manure service and makes management decisions in the operation of the service.

“*Man-made manure drainage system*” means a drainage ditch, flushing system, or other drainage device which was constructed by human beings and is used for the purpose of transporting manure.

“*Manure*” means animal excreta or other commonly associated wastes of animals including but not limited to bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs. For the purposes of NPDES permitting, “manure” includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal. If a manure storage structure or animal truck wash effluent structure contains both manure from an AFO and animal truck wash effluent from an animal truck wash facility, the effluent shall be deemed to be manure.

“*Manure storage structure*” means a formed manure storage structure, an unformed manure storage structure, digester, or a dry bedded manure storage structure. A manure storage structure does not include the following: (1) egg washwater storage structure, (2) areas of a confinement building where no manure is stored, and (3) areas of a confinement building where the animals have direct contact with the manure and the manure is removed regularly during the production cycle or at the conclusion of the production cycle (referred to as the “animal production area”). An animal truck wash effluent structure may be the same as a manure storage structure that is part of the confinement feeding operation, so long as the primary function of such impoundment is to collect and store both effluent from the animal truck wash facility and manure from the confinement feeding operation.

“*NPDES permit*” means a written permit of the department, pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO.

“*NRCS*” means United States Department of Agriculture Natural Resources Conservation Service.

“*Nutrient management plan*” or “*NMP*” means a plan that provides for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, open feedlot effluent, animal truck wash effluent, including the application of effluent, as provided in rule 567—65.209(455B,459A).

“*One hundred year floodplain*” means the land adjacent to a major water source, if there is at least a 1 percent chance that the land will be inundated in any one year. In making the calculations, the department shall consider available maps or data compiled by the Federal Emergency Management Agency.

“*Open feedlot*” means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

“*Open feedlot effluent*” means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed. If an open feedlot operation structure or animal truck wash effluent structure contains effluent from both an open feedlot operation and an animal truck wash facility, the animal truck wash effluent shall be deemed to be open feedlot effluent.

“*Open feedlot effluent basin*” means an open feedlot basin that does not settle solids before the effluent goes to the basin.

“*Open feedlot operation*” means an unroofed or partially roofed AFO if crop, vegetation, or forage growth or residue is not maintained as part of the AFO during the period that animals are confined in the AFO. “Open feedlot operation” includes a “partially roofed AFO” as defined in this rule. Iowa Code section 459A.103 provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

“Open feedlot operation structure” means an open feedlot, an open feedlot effluent basin, a settled open feedlot effluent basin, a solids settling facility, or an AT system. “Open feedlot operation structure” does not include a manure storage structure as defined in Iowa Code section 459.102.

“Owner” means a person who has legal or equitable title to the property where the AFO is located or a person who has legal or equitable title to the AFO structures. “Owner” does not include a person who has a lease to use the land where the AFO is located or to use the AFO structures.

“Partially roofed AFO” means an AFO in which the animals are confined under a roof and there exists unroofed areas located on the perimeter of the roofed structure, where the animals have unrestricted access at all times. The square footage of the unroofed area shall be at least 10 percent of the square footage of the attached roofed production area. Openings or vents in the roofed portion shall not be included in the 10 percent unroofed calculation.

“Permanent vegetation cover” means land that is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes but is not limited to pastures, grasslands or forages.

“Process wastewater” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing of pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs or bedding.

“Production area” means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes but is not limited to open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses, and stables. The manure storage area includes but is not limited to lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

“Professional engineer” or *“PE”* means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a PE pursuant to Iowa Code section 542B.17.

“Public thoroughfare” means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

“Public use area” means that portion of land owned by the United States, the state, or a political subdivision with facilities that attract the public to congregate and remain in the area for significant periods of time. Facilities include but are not limited to picnic grounds, campgrounds, cemeteries, lodges and cabins, shelter houses, playground equipment, swimming beaches at lakes, and fishing docks, fishing houses, fishing jetties or fishing piers at lakes. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through but does not congregate or remain in the area for significant periods of time.

“Public water supply” (also referred to as a system or a water system) means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water and used primarily in connection with such system, and (2) any collection (including wells) or pretreatment storage facilities not under such control that are used primarily in connection with such system. A public water supply system is either a “community water system” or a “noncommunity water system.”

“Q100,” as defined in rule 567—70.2(455B,481A), means a flood having a 1 percent chance of being equaled or exceeded in any one year as determined by the department.

“Qualified confinement feeding operation” means a confinement feeding operation that has an animal unit capacity of:

1. 5,333 or more for animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation.
2. 2,500 or more for a swine farrowing and gestating operation, not including replacement breeding swine if the following apply:
 - The replacement breeding swine are raised at the confinement feeding operation; and
 - The replacement breeding swine are used in the farrowing and gestation operation.
3. 5,400 or more for a swine farrow-to-finish operation.
4. 8,500 or more for a confinement feeding operation maintaining cattle.

“*Qualified stockpile cover*” means a barrier impermeable to precipitation that is used to protect a stockpile from precipitation.

“*Qualified stockpile structure*” means a building or roofed structure that is all of the following:

1. Impermeable to precipitation.
2. Constructed using wood, steel, aluminum, vinyl, plastic, or other similar materials.
3. Constructed with walls or other means to prevent precipitation-induced surface runoff from contacting the stockpile.

“*Release*” means an actual, imminent or probable discharge of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids from an AFO or animal truck wash facility to surface water, groundwater, drainage tile line or intake or to a designated area resulting from storing, handling, transporting or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids.

“*Religious institution*” means a building in which an active congregation is devoted to worship.

“*Research college*” means an accredited public or private college or university, including but not limited to a university under control of the state board of regents as provided in Iowa Code chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in Iowa Code chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

“*Residence*” means a house or other building, including all structures attached to the building, not owned by the owner of the AFO that meets all of the following criteria at the location of the intended residence:

1. Used as a place of habitation for humans on a permanent and frequent basis.
2. Not readily mobile.
3. Connected to a permanent source of electricity, a permanent private water supply or a public water supply system and a permanent domestic sewage disposal system including a private, semipublic or public sewage disposal system.
4. Assessed and taxed as real property.

If a house or other building has not been occupied by humans for more than six months in the last two years, or if a house or other building has been constructed or moved to its current location within the past six months, the owner of the intended residence has the burden of proving that the house or other building is a residence. Paragraph “3” shall not apply to a house or other building inhabited by persons who are exempt from the compulsory education standards of Iowa Code section 299.24 and whose religious principles or tenets prohibit the use of the utilities listed.

“*Restricted spray irrigation equipment*” means spray irrigation equipment that disperses manure through an orifice at a rate of 80 pounds per square inch or more.

“*School*” means an educational institution.

“*Settleable solids,*” “*scraped solids,*” or “*solids*” means that portion of the effluent that meets all the following requirements:

1. The solids do not flow perceptibly under pressure.
2. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

“*Settled open feedlot effluent*” means a combination of manure, precipitation-induced runoff, or other runoff

originating from an open feedlot operation after its settleable solids have been removed.

“Settled open feedlot effluent basin” or *“runoff control basin”* means a covered or uncovered impoundment that is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent. An animal truck wash facility may be part of an open feedlot operation. An animal truck wash effluent structure may be the same as a settled open feedlot effluent basin that is part of the open feedlot operation, so long as the primary function of such impoundment is to collect and store effluent from both the animal truck wash facility and the open feedlot operation.

“Seasonal high-water table” means the part of the soil profile closest to the soil surface that becomes saturated (usually in the spring) as observed in a monitoring well or determined by recognition of soil redoxomorphic features.

NOTE: “Redoxomorphic features” refers to the gleying or mottling or both that occur under saturated conditions within the soil profile.

“Secondary containment barrier” means a structure used to retain accidental manure overflow from a manure storage structure.

“Shallow well” means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“Sinkhole” means any closed depression that was caused by the dissolution or collapse of subterranean materials in a carbonate formation or in gypsum or rock salt deposits through which water may drain to the local groundwater system. Such depressions may or may not be open to the surface at times. Intermittently, sinkholes may hold water forming a pond.

“Small AFO” or *“SAFO”* means an AFO that has an animal unit capacity of 500 or fewer animal units.

“Small animal truck wash facility” means an animal truck wash facility, if all of the following apply:

1. The animal truck wash facility and all single-unit trucks, truck-tractors, semitrailers, or trailers that are washed at the facility are owned by the same person; and
2. The average total per-day volume of washwater used by the animal truck wash facility does not exceed 2,000 gallons as calculated on a monthly basis.

“Snow-covered ground” means soil covered by one inch or more of snow or soil covered by one-half inch or more of ice.

“Solids settling facility” means a basin, terrace, diversion, or other structure or solids removal method that is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A “solids settling facility” does not include a basin, terrace, diversion, or other structure or solids removal method that retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

“Spray irrigation equipment” means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for aerial application of water to aid the growing of general farm crops.

“Stockpile” means dry manure or dry bedded manure originating from a confinement feeding operation that is stored at a particular location outside a confinement feeding operation building or a manure storage structure. For open feedlot operations and animal truck washes, “stockpile” means any accumulation of manure, scraped solids, settleable solids or combination of manure and solids located outside of the open feedlot or animal truck wash facility or outside of an area that drains to an open feedlot or animal truck wash facility, where the scraped manure or solids are stored for less than six months.

“Stockpile dry bedded manure” means to store dry bedded manure outside a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.

“Stockpile dry manure” means to create or add to a dry manure stockpile.

“Surface water drain tile intake” means an opening to a drain tile, including intake pipes and French drains, which allows surface water to enter the drain tile without filtration through the soil profile.

“Swine farrow-to-finish operation” means a confinement feeding operation in which porcine animals are

produced and in which a primary portion of the phases of the production cycle is conducted at one confinement feeding operation. Phases of the production cycle include but are not limited to gestation, farrowing, growing and finishing. At a minimum, farrowing, growing, and finishing shall be conducted at the operation with a majority of the pigs farrowed at the site finished to market weight in order to qualify as a farrow-to-finish operation.

“Threshold requirements for an engineer” means the limits, pursuant to Iowa Code section 459.303, that require that the design of a formed manure storage structure or egg washwater storage structure be prepared and signed by a PE licensed in the state of Iowa or by an engineer working for the NRCS. A confinement feeding operation that utilizes a formed manure storage structure meets threshold requirements for an engineer if any of the following apply:

1. A confinement feeding operation with an animal unit capacity of 1,250 or more animal units for swine maintained as part of a swine farrowing and gestating operation.
2. A confinement feeding operation with an animal unit capacity of 2,750 or more animal units for swine maintained as part of a swine farrow-to-finish operation.
3. A confinement feeding operation with an animal unit capacity of 4,000 or more animal units for cattle maintained as part of a cattle operation.
4. Any other confinement feeding operation with an animal unit capacity of 3,000 or more animal units.

“Unformed animal truck wash effluent structure” means a covered or uncovered impoundment used to store animal truck wash effluent, other than a formed animal truck wash effluent structure.

“Unformed manure storage structure” means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

“Unformed settled open feedlot effluent basin” means a settled open feedlot effluent basin, other than a formed settled open feedlot effluent basin.

“Vegetative infiltration basin” or *“VIB”* means an open feedlot operation structure in which settled open feedlot effluent is discharged into a relatively flat basin area which is bermed to prevent entry or discharge of surface water flows and is planted to permanent vegetation. An extensive tile system installed at a depth of three to five feet is used to collect infiltrated settled open feedlot effluent from the VIB and discharge it into a VTA for further treatment. As opposed to wetlands, which are designed to maintain a permanent water level, a VIB is designed to maximize water infiltration into the soil and thus normally will have standing water for only short periods of time. Removal of settleable solids is required prior to discharge of open feedlot effluent into the VIB. Soil suitability is essential to ensure adequate filtration and treatment of pollutants. Periodic harvesting of vegetation is required.

“Vegetative treatment area” or *“VTA”* means an open feedlot operation structure in which settled open feedlot effluent is discharged into areas that are level in one dimension and have a slight slope (less than 5 percent) in the other dimension and are planted to relatively dense permanent vegetation. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain even flow throughout the length of the VTA. Management to maintain a dense vegetation cover is required, as is periodic harvesting of vegetation.

“Water of the state” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, that are contained within, flow through or border upon the state or any portion thereof.

“Water source” means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

“Water well” means an excavation that is drilled, cored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “Water well” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

“*Wetted perimeter*” means the outside edge of land where the direct discharge of manure occurs from spray irrigation equipment.

65.1(2) Incorporation by reference. The text of the following incorporated materials is not included in this chapter. The materials are provided at iowadnr.gov/af/rules. The materials listed below are hereby made a part of this chapter. For material subject to change, only the specific version specified in this subrule is incorporated. Any amendment or revision to a reference document is not incorporated until this subrule has been amended to specify the new version.

a. “Act” means the federal Water Pollution Control Act, also known as the Clean Water Act, as defined by 40 CFR 403.3 as amended through July 19, 2023;

b. “AFO Siting Atlas” means an online mapping tool to assist in determining compliance of potential building sites to meet regulatory requirements. The AFO Siting Atlas is located on the department’s website, and the regulatory layers are effective as of [the effective date of these rules]. Any changes to the regulatory layers of the AFO Siting Atlas shall be done through rulemaking. Regulatory layers include: karst, one hundred year floodplains in major water sources, and sinkholes;

c. “CFR” or “Code of Federal Regulations” means the federal administrative rules adopted by the United States as amended through July 19, 2023;

d. County Parks and Recreation Areas listed in Iowa’s County Conservation System Guide to Outdoor Adventure - effective date June 19, 2024;

e. Parks in Iowa under the federal jurisdiction of the United States Army Corps of Engineers listed on the United States Army Corps of Engineers’ website - effective date June 19, 2024;

f. Designated Wetlands in Iowa – effective date August 23, 2006;

g. Emergency spill line telephone number is 515.725.8694 – effective January 1, 2023;

h. Appendix A: Open feedlot effluent control alternatives for open feedlot operations – effective December 14, 2016;

i. Appendix B: Master matrix – effective March 1, 2003;

j. Appendix C: Design specifications—formed manure storage structures – effective March 24, 2004;

k. Table 1: Major water sources—Rivers and Streams – effective December 14, 2016;

l. Table 2: Major water sources—Lakes – effective December 14, 2016;

m. Table 3: Annual pounds of nitrogen per space of capacity – effective September 15, 2010;

n. Table 4: Crop nitrogen usage rate factors – effective December 14, 2016;

o. Table 5: Manure production per space of capacity – effective September 15, 2010;

p. Table 6: Required separation distances for confinement feeding operations construction on or after March 1, 2003—swine, sheep, horses, poultry, and beef and dairy cattle – effective September 15, 2010;

q. Table 6a: Required separation distances for confinement feeding operations constructed on or after January 1, 1999, but prior to March 1, 2003—swine, sheep, horses and poultry – effective September 15, 2010;

r. Table 6b: Required separation distances for confinement feeding operations constructed on or after January 1, 1999, but prior to March 1, 2003—beef and dairy cattle – effective September 15, 2010;

s. Table 6c: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—swine, sheep, horses and poultry – effective September 15, 2010;

t. Table 6d: Required separation distances for confinement feeding operations constructed prior to January 1, 1999—beef and dairy cattle – effective September 15, 2010;

u. Table 7: Required separation distances for open feedlot operations, stockpiles from open feedlot operations, stockpiles from dry manure confinement operations and stockpiles from dry bedded confinement operations – effective September 15, 2010;

v. Table 8: Summary of credit for mechanical aeration – effective September 15, 2010;

w. List of high-quality water resources in 567—Chapter 61 – effective January 1, 2001;

x. NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index – published April 2023;

y. Iowa State University Extension and Outreach publication PM 1688, “A General Guide for Crop Nutrient and Limestone Recommendations in Iowa” – published February 2023;

z. Iowa State University Extension and Outreach publication PMR 1003, “Using Manure Nutrients for Crop Production”– published April 2023;

aa. Iowa State University Extension and Outreach publication AE 3550, “How to Sample Manure for Nutrient Analysis” – published January 2021; and

bb. Iowa State University Extension and Outreach publication CROP 31-8, “Take a Good Soil Sample to Help Make Good Fertilization Decisions” – published December 2016.

567—65.2(455B,459,459A,459B) Reporting of releases. A release, as defined in rule 567—65.1(455B,459,459A,459B), shall be reported to the department as provided in this subrule. This rule does not apply to land application of manure in compliance with these rules.

65.2(1) Notification. A person storing, handling, transporting, or land-applying manure from an AFO or animal truck wash facility who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department’s spill line. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period if the spill involves a public roadway and public safety could be threatened. Reports made pursuant to this rule shall be confirmed in writing as provided in paragraph 65.2(1)“c.”

65.2(2) Verbal report. The verbal report of such a release should provide information on as many items listed in paragraph 65.2(1)“c” as available information will allow.

65.2(3) Written report. The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and contain at a minimum the following information:

a. The approximate location of the alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or was discovered).

b. The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

c. The time and date of the verbal report to the department of the alleged release.

d. The name, mailing address and telephone number of the person reporting the alleged release.

e. The name, mailing address and telephone number of any other person with knowledge of the event who can be contacted for further information.

f. The source of the manure allegedly released (e.g., formed storage, earthen storage) and the form of the manure or process water released.

g. The estimated or known volume of manure allegedly released.

h. The weather conditions at the time of the onset or discovery of the alleged release.

i. If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

j. The approximate location of the nearest stream or other water body that is or could be impacted by the alleged release and the approximate location to the alleged release of any known tile intakes or tile lines that could be a direct conveyance to a surface water or groundwater.

k. A description of any containment or remedial measures taken to minimize the impact of the alleged release.

l. Any information that may assist the department in evaluating the alleged release.

65.2(4) Reporting of subsequent findings. All subsequent findings and laboratory results should be reported and submitted in writing to the department as soon as they become available.

567—65.3(455B,459,459A,459B) CAFOs and NPDES permits. Iowa Code sections 459B.306 and 459.311(2) require a confinement feeding operation and Iowa Code section 459A.401(2) requires an open feedlot operation that is a CAFO as defined in 40 CFR 122.23(b) to comply with applicable NPDES permit requirements pursuant to rules adopted by the commission. The following regulations are adopted by reference:

1. 40 CFR 122.21, application for a permit.
2. 40 CFR 122.23, CAFOs.
3. 40 CFR 122.42(e), additional conditions applicable to specified categories of NPDES permits.
4. 40 CFR 122.63(h), minor modification of permits.
5. 40 CFR Part 412, CAFO point source category.

567—65.4(455B,459,459A,459B) Complaint investigations. Complaints of violations of Iowa Code chapters 455B, 459, 459A and 459B and this rule, which are received by the department or are forwarded to the department by a county, following a county board of supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

65.4(1) If after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation related to violations of the Iowa Code or this chapter are true or untrue, the county board of supervisors shall forward its finding to the department director.

65.4(2) A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue, of rules adopted by the department; Iowa Code chapters 455B, 459, 459A and 459B or environmental standards in regulations subject to federal law and enforced by the department.

65.4(3) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of the threat to the quality of surface water or groundwater.

65.4(4) The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to investigate.

65.4(5) The department will notify the county board of supervisors where the violation is alleged to have occurred before doing a site investigation unless the department determines that a clear, present and impending danger to the public health or environment requires immediate action.

65.4(6) The county board of supervisors may designate a county employee to accompany the department on the investigation of any site as a result of a complaint.

65.4(7) A county employee accompanying the department on a site investigation has the same right of access to the site as the department official conducting the investigation during the period that the county designee accompanies the department official. The county shall not have access to records required in subrule 65.111(9).

65.4(8) Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete enforcement action arising from the investigation. The department shall deliver a copy of the notice to the AFO or animal truck wash facility that is the subject of the complaint, any alleged violators if different from the AFO or animal truck wash facility and the county board of supervisors of the county where the violation is alleged to have occurred.

65.4(9) When a person who is a department official, an agent of the department, or a person accompanying the department official or agent enters the premises of an AFO or animal truck wash facility, both of the following shall apply:

a. The person may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter or the rules or standards adopted under this chapter. However, the owner or person in charge shall be notified.

(1) If the owner or occupant of any property refuses admittance to the operation, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

(2) In the application, the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched; give the date of the last inspection if known; give the date and time of the proposed inspection; declare the need for such inspection; recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact; and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director, it shall be identified in the application.

(3) If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

(4) In making inspections and searches pursuant to the authority of this rule, the director must execute the warrant:

1. Within ten days after its date.
2. In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.
3. Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.
 - b.* The person shall comply with standard biosecurity requirements customarily required by the AFO or animal truck wash facility which are necessary in order to control the spread of disease among an animal population.

567—65.5(455B,459,459A,459B) Transfer of legal responsibilities or title. If title or legal responsibility for a permitted AFO or an animal truck wash facility is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the construction permit and these rules. The person to whom the construction permit was issued and the person to whom title or legal responsibility is transferred shall notify the department, in writing, of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the construction permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 459.604 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator.

567—65.6(455B,459,459A,459B) Construction. For purposes of these rules:

65.6(1) Construction of an AFO structure, open feedlot operation structure, or animal truck effluent structure begins or an AFO structure, open feedlot operation structure, or animal truck wash effluent structure is constructed when any of the following occurs:

- a.* Excavation for a proposed AFO structure, open feedlot operation structure, or animal truck wash effluent structure; excavation for footings; or filling or compacting of the soil or soil amendments for a proposed AFO structure, open feedlot operation structure, or animal truck wash effluent structure.
- b.* Installation of forms for concrete for an AFO structure, open feedlot operation structure, or animal truck wash effluent structure.
- c.* Installation of piping for movement of manure within, from or between AFO structures, open feedlot operation structures, or animal truck wash effluent structures.

65.6(2) Construction does not begin upon occurrence of any of the following:

- a.* Removal of trees, brush, or other vegetative growth.
- b.* Construction of driveways or roads.
- c.* General earth moving for leveling at the site.
- d.* Installation of temporary utility services.
- e.* Installation of temporary or permanent groundwater lowering tiles.

65.6(3) Prohibition on construction for confinement feeding operations.

a. A person shall not construct or expand an AFO structure that is part of a confinement feeding operation, if the person is either of the following:

(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand a confinement feeding operation structure for five years after the date of the last violation committed by a person or a confinement feeding operation in which the person

holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. Paragraphs 65.6(3)“a” and “b” shall not prohibit a person from completing the construction or expansion of an AFO structure, if either of the following applies:

- (1) The person has an unexpired permit for the construction or expansion of the AFO structure.
- (2) The person is not required to obtain a permit for the construction or expansion of the AFO structure.

d. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as specified in Iowa Code sections 459.310 and 460.205.

567—65.7(455B,459,459A,459B) Karst terrain. Except as provided for in subrules 65.7(4) and 65.7(5), the provisions of this rule shall apply to the following structures: (1) confinement feeding operation structures at confinement feeding operations with over 500 animal units, (2) settled open feedlot effluent basins at open feedlot operations requiring a construction permit, (3) egg washwater structures, (4) AT systems, and (5) animal truck wash effluent structures.

65.7(1) Karst terrain submittal requirements. Prior to beginning construction of a structure identified in the introductory paragraph of this rule, the person planning the construction shall determine whether the proposed structure will be located in potential “karst terrain,” as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed structure is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed structure is not in potential karst terrain, the person planning the construction shall submit a printed map from the AFO Siting Atlas indicating the location of the structure, with the potential karst layer turned on, with the construction permit application documents or with the construction design statement if a construction permit is not required.

b. If the proposed formed manure storage structure is located in potential karst terrain, a PE licensed in Iowa, an NRCS-qualified staff person or a qualified organization shall submit a soil report, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the bottom of the proposed structure to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the structure or two test pits located within five feet of the outside of the structure are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of seven feet below the bottom elevation of the proposed structure or into bedrock, whichever is shallower. Any limestone, dolomite, or soluble bedrock in the corings or test pits shall be considered the bedrock surface rather than augur refusal. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials, and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

65.7(2) Construction standards for formed manure storage structures. A formed manure storage structure shall be constructed in accordance with the minimum concrete standards set forth in subrule 65.108(10) or Iowa Code section 459.307 if the structure is not constructed of concrete. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a storage structure.

65.7(3) Vertical separation distance requirements for formed manure storage structures. Except as provided for in subrule 65.7(5) related to the construction of a dry bedded confinement feeding operation structure, in addition to the concrete standards set forth in subrule 65.108(10) or Iowa Code section 459.307 if not constructed of concrete, a person constructing a formed manure storage structure on karst terrain shall comply with the following:

a. A minimum five-foot layer of low permeability soil (1×10^{-6} cm/sec) or rock between the bottom of a formed manure storage structure and limestone, dolomite, or other soluble rock is required if the formed manure storage structure is not designed by a PE or NRCS-qualified staff person.

b. If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than five feet, the structure shall be designed and sealed by a PE or NRCS-qualified staff person who certifies the structural integrity of the structure. A two-foot-thick

layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure. However, it is recommended that any formed manure storage structure be constructed aboveground if the vertical separation distance between the bottom of the structure and the limestone, dolomite, or other soluble rock is less than five feet.

c. Groundwater monitoring shall be performed as specified by the department.

d. Backfilling shall not start until the floor slats have been placed or permanent bracing has been installed and grouted and shall be performed with material free of vegetation, large rocks, or debris.

65.7(4) *Unformed manure storage structures.* The construction of unformed manure storage structures, including unformed manure storage structures at SAFOs, is prohibited in karst terrain or an area that drains into a known sinkhole. In potential karst, at least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed unformed manure storage structure or into bedrock, whichever is shallower. If a 25-foot vertical separation distance can be maintained between the bottom of the unformed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain. No intact or weathered bedrock, including sandstone, shale, limestone, dolomite, or soluble rock, shall be removed or excavated during the construction of a manure storage structure.

65.7(5) *Dry bedded confinement feeding operation structure.* A person constructing any dry bedded confinement feeding operation structure, including structures at SAFOs, on karst terrain shall comply with all of the following:

a. The person must construct the structure at a location where there is a vertical separation distance of at least five feet between the bottom of the floor of the structure and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

b. The person must construct the structure with a floor consisting of reinforced concrete at least five inches thick.

567—65.8(455B,459,459A,459B) Karst terrain—stockpile requirements. The provisions of this rule shall apply to locations at confinement feeding operations where dry manure or dry bedded manure is stockpiled.

65.8(1) *Karst terrain submittal requirements.* Prior to stockpiling dry manure or dry bedded manure, the person planning to stockpile shall determine whether the proposed stockpile location will be located in potential “karst terrain,” as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed stockpile location is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

a. If the proposed stockpile location is not in potential karst terrain, the person planning the stockpiling shall submit a printed map from the AFO Siting Atlas indicating the location of the stockpile location, with the potential karst layer turned on, to the department.

b. If the proposed stockpile is located in potential karst terrain, a PE licensed in Iowa, NRCS-qualified staff person or a qualified organization shall submit a soil report to the department, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the proposed bottom of the stockpile to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the stockpile location or two test pits located within five feet of the outside of the stockpile location are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of 25 feet below the bottom elevation of the proposed stockpile or into bedrock, whichever is shallower. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed stockpile and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

65.8(2) *Dry manure stockpiling.* A person shall comply with all of the following when stockpiling dry manure on karst terrain:

a. Maintain a minimum five-foot vertical separation distance between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock.

b. A person who stockpiles dry manure for more than 15 days shall use any of the following:

(1) A qualified stockpile structure; or

(2) A qualified stockpile cover. However, a person shall not stockpile dry manure using a qualified stockpile cover at a long-term stockpile location unless the stockpile is located on a reinforced concrete slab at least five inches thick.

65.8(3) *Dry bedded manure stockpiling.* A person shall comply with all of the following when stockpiling dry bedded manure on karst terrain or above an alluvial aquifer:

a. Maintain a minimum five-foot vertical separation distance between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

b. Stockpiles shall be placed on a reinforced concrete slab that is a minimum of five inches thick.

567—65.9(455B,459,459A,459B) Floodplains. The provisions of this rule shall apply to the following structures: (1) confinement feeding operation structures, (2) settled open feedlot effluent basins at open feedlot operations requiring a construction permit, (3) egg washwater structures, (4) AT systems, and (5) animal truck wash effluent structures.

65.9(1) *Floodplains.* A person shall not construct a manure storage structure in the one hundred year floodplain of a major water source. The one hundred year floodplain of major water source designations are included on the AFO Siting Atlas. For construction of facilities located in the following counties that do not have a FEMA Flood Rate Insurance Map (FIRM), Black Hawk, Johnson, Louisa, Winneshiek, and Woodbury, a person shall have the ability to contest the one hundred year floodplain determination by supplying supporting documents to the department for further evaluation. Placing fill material on floodplain land to elevate the land above the one hundred year flood elevation will not be considered as removing the land from the one hundred year floodplain for the purpose of this subrule. Even if the proposed location of the manure storage structure is not on the one hundred year floodplain of a major water source, the site may be on the floodplain of a nonmajor water source and the department may require a floodplain development permit pursuant to 567—Chapters 70 through 76 if the drainage area of the nonmajor water source adjacent to the proposed structure is greater than ten square miles in a rural location or two square miles in an urban location. The proposed construction can be screened through the department’s online floodplain database siting tool.

65.9(2) *Flooding protection.* A confinement feeding operation or open feedlot structure proposed to be constructed on land that would be inundated by Q100 shall meet requirements as specified in 567—Chapters 70 through 76, unless otherwise prohibited according to subrule 65.9(1).

65.9(3) *Submittal requirements.* The person planning the construction shall submit a printed map from the AFO Siting Atlas indicating the location of the structure, with the one hundred year floodplain layer turned on, with the construction permit application documents or with the construction design statement if a construction permit is not required.

65.9(4) *Exemptions to prohibition on one hundred year floodplain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells, designated wetlands confinement structures and animal truck wash effluent structures.* As specified in Iowa Code sections 459.310(4) and 459A.404(3), a separation distance required in subrules 65.106(3) and 65.106(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subrule 65.9(1) shall not apply to a confinement feeding operation or animal truck wash that includes a confinement feeding operation structure or animal truck wash effluent structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures or animal truck wash effluent structures that are part of the confinement feeding operation or animal truck wash are replaced with one or more formed manure storage structures or formed animal truck wash effluent structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation or animal truck wash that utilizes all replacement formed manure storage structures or animal truck wash effluent structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure or formed animal truck wash effluent

structure.

(3) The capacity of all replacement formed manure storage structures or animal truck wash effluent structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation or animal truck wash utilizing the replacement formed manure storage structures or animal truck wash effluent structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure or animal truck wash effluent structure is closer to the location or object from which separation is required under subrules 65.106(3) and 65.106(4) than any other confinement feeding operation structure or animal truck wash effluent structure which is part of the operation.

(5) The replacement formed manure storage structure or animal truck wash effluent structure meets or exceeds the requirements of Iowa Code section 459.307 and subrule 65.108(10).

b. A replacement formed manure storage structure that is part of the confinement feeding operation or animal truck wash is constructed on or after April 28, 2003, if it complies with the following provisions:

(1) The replacement formed manure storage structure or animal truck wash effluent structure replaces the confinement feeding operation or animal truck wash's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure or animal truck wash effluent structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure or animal truck wash effluent structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation or animal truck wash's existing manure storage and handling facilities. If the formed manure storage structure or animal truck wash effluent structure will replace any existing manure storage structure or animal truck wash effluent structure, the department shall require that the replaced manure storage structure or animal truck wash effluent structure be properly closed.

567—65.10 to 65.99 Reserved.

DIVISION II
CONFINEMENT FEEDING OPERATIONS AND DRY BEDDED CONFINEMENT FEEDING OPERATIONS

567—65.100(455B,459,459B) Minimum manure control requirements. Confinement feeding operations shall be constructed, managed and maintained to meet the minimum manure control requirements stated in subrules 65.100(1) to 65.100(6). A release shall be reported to the department as provided in subrule 65.2(1). Dry manure stockpiling requirements are stated in subrule 65.100(7). Dry bedded manure stockpiling requirements are stated in subrule 65.100(8).

65.100(1) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state.

a. Control of manure from confinement feeding operations may be accomplished through use of manure storage structures or other manure control methods. Sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application. A confinement feeding operation, other than a SAFO, that is constructed or expanded on or after July 1, 2009, shall not surface-apply liquid manure on frozen or snow-covered ground when there is an emergency, as described in subrule 65.101(4), unless the operation has a minimum of 180 days of manure storage capacity. Additional capacity shall be provided if precipitation, manure or wastes from other sources can enter the manure storage structure.

b. Manure shall be removed from the control facilities as necessary to prevent overflow or discharge of manure from the facilities. Manure stored in unformed manure storage structures or unformed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of two feet of freeboard in the structure, unless a greater level of freeboard is required to maintain the structural integrity of the structure or prevent manure overflow. Manure stored in unroofed formed manure storage structures or formed egg washwater storage structures shall be removed from the structures as necessary to maintain a minimum of one foot of freeboard in the structure unless a greater level of freeboard is required to maintain the

structural integrity of the structure or prevent manure overflow.

c. To ensure that adequate capacity exists in the manure storage structure to retain all manure produced during periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors), the manure shall be removed from the manure storage structure as needed prior to these periods.

d. Dry manure or dry bedded manure originating at a confinement feeding operation may be retained as a stockpile so long as the stockpiled dry manure or dry bedded manure meets the following:

(1) Dry manure stockpiling requirements provided in subrule 65.100(7) or dry bedded manure stockpiling requirements provided in subrule 65.100(8).

(2) Applicable NPDES requirements pursuant to the Act.

(3) The dry manure or dry bedded manure is removed from the stockpile and applied in accordance with rule 567—56.101(459,459B) within six months after the dry manure or dry bedded manure is first stockpiled.

(4) Dry manure stockpiles are not required to meet the requirements in subparagraphs 65.100(1)“*d*”(1) to 65.100(1)“*d*”(3) above if the dry manure originates from a confinement feeding operation that was constructed prior to January 1, 2006, unless any of the following apply:

1. The confinement feeding operation is expanded after January 1, 2006.

2. Dry manure is stockpiled in violation of subrule 65.100(1).

3. Precipitation-induced runoff from the stockpile has drained off the property.

65.100(2) If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of manure control than that specified in subrule 65.100(1) is required to provide an adequate level of water pollution control for a specific AFO, the department may establish different minimum manure control requirements for that operation.

65.100(3) In lieu of using the manure control methods specified in subrule 65.100(1), the department may allow the use of manure treatment or other methods of manure control if it determines that an adequate level of manure control will result.

65.100(4) No direct discharge shall be allowed from an AFO into a publicly owned lake, a sinkhole, or an agricultural drainage well.

65.100(5) All manure removed from an AFO or its manure control facilities shall be land-applied in a manner that will not cause surface or groundwater pollution. Application in accordance with the provisions of state law and this chapter shall be deemed as compliance with this requirement.

65.100(6) As soon as practical but not later than six months after the use of an AFO is discontinued, all manure shall be removed from the discontinued AFO and its manure control facilities and be land applied.

65.100(7) Dry manure stockpiling requirements for a confinement feeding operation.

a. Requirements for terrain, other than karst terrain. Dry manure stockpiled on terrain, other than karst terrain, for more than 15 consecutive days shall comply with either of the following:

(1) Dry manure shall be stockpiled using any of the following:

1. A qualified stockpile structure; or

2. A qualified stockpile cover. Long-term stockpiles utilizing a qualified stockpile cover shall be placed on a constructed impervious base that can support the load of the equipment used under all weather conditions. The coefficient of permeability of the impervious base shall be less than 1×10^{-7} cm/sec (0.00028 feet/day). Permeability results shall be submitted to the department prior to use of the stockpile site.

(2) A stockpile inspection statement shall be delivered to the department as follows:

1. The department must receive the statement by the fifteenth day of each month.

2. The stockpile inspection statement shall provide the location of the stockpile and document the results of an inspection conducted during the previous month. The inspection must evaluate whether precipitation-induced runoff is draining away from the stockpile and, if so, describe actions taken to prevent the runoff. If an inspection by the department documents that precipitation-induced runoff is draining away from a stockpile, the dry manure must be immediately removed from the stockpile or comply with all directives of the department to prevent the runoff.

3. The stockpile inspection statement must be in writing and may be on a form prescribed by the department.

b. Dry manure stockpile siting prohibitions.

(1) Grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway.

(2) Sloping land. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to silt fences, temporary earthen berms, or other effective measures, and that prevent or diminish precipitation-induced runoff from the stockpile.

65.100(8) Prohibitions and siting restrictions for dry bedded manure stockpiling requirements for a dry bedded confinement feeding operation.

a. Prohibition in a grassed waterway. A stockpile or stockpile structure shall not be placed in a grassed waterway, where water pools on the soil surface, or in any location where surface water will enter the stockpile.

b. Siting restrictions. A stockpile or stockpile structure shall not be placed on land having a slope of more than 3 percent, unless the dry manure or dry bedded manure is stockpiled using methods, structures, or practices that contain the stockpile, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures that prevent or diminish precipitation-induced runoff from the stockpile. A stockpile or stockpile structure located in karst terrain must comply with the karst requirements in subrule 65.8(3).

567—65.101(455B,459,459B) Requirements for land application of manure from a confinement feeding operation.

65.101(1) *General requirements for application rates and practices for confinement feeding operations.*

a. For manure originating from an anaerobic lagoon or aerobic structure, application rates and practices shall be used to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. In determining appropriate application rates and practices, the person land-applying the manure shall consider the site conditions at the time of application including anticipated precipitation and other weather factors, field residue and tillage, site topography, the existence and depth of known or suspected tile lines in the application field, and crop and soil conditions, including a good-faith estimate of the available water-holding capacity given precipitation events, the predominant soil types in the application field and planned manure application rate.

b. Spray irrigation equipment shall be operated in a manner and with an application rate and timing that does not cause runoff of the manure onto the property adjoining the property where the spray irrigation equipment is being operated.

c. For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, restricted spray irrigation equipment shall not be used unless the manure has been diluted with surface water or groundwater to a ratio of at least 15 parts water to 1 part manure. Emergency use of spray irrigation equipment without dilution shall be allowed to minimize the impact of a release as approved by the department.

65.101(2) *Separation distance requirements for land application of manure.* Land application of manure shall be separated from objects and locations as specified in this subrule.

a. For liquid manure from a confinement feeding operation, the required separation distance from a residence not owned by the titleholder of the land, a business, a church, a school, or a public use area is 750 feet, as specified in Iowa Code section 459.204. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school, or public use area.

b. The separation distance specified in paragraph 65.101(2)“*a*” shall not apply if any of the following apply:

(1) The liquid manure is injected into the soil or incorporated within the soil not later than 24 hours after the original application.

(2) The titleholder of the land benefitting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

(3) The liquid manure originates from a SAFO.

(4) The liquid manure is applied by low-pressure spray irrigation equipment pursuant to paragraph

65.101(2)“a.”

c. Separation distance for spray irrigation from property boundary line. Spray irrigation equipment shall be set up to provide for a minimum distance of 100 feet between the wetted perimeter as specified in the spray irrigation equipment manufacturer’s specifications and the boundary line of the property where the equipment is being operated. The actual wetted perimeter, as determined by wind speed and direction and other operating conditions, shall not exceed the boundary line of the property where the equipment is being operated. For property that includes a road right-of-way, railroad right-of-way or an access easement, the property boundary line shall be the boundary line of the right-of-way or easement.

d. Distance from structures for low-pressure irrigation systems. Low-pressure irrigation systems shall have a minimum separation distance of 250 feet between the actual wetted perimeter and the closest point of a residence, a business, church, school or public use area.

e. Waivers. Waivers to paragraph 65.101(2)“c” may be granted by the department if sufficient and proposed alternative information is provided to substantiate the need and propriety for such action. Waivers may be granted on a temporary or permanent basis. The request for a waiver shall be in writing and include information regarding:

(1) The type of manure storage structure from which the manure will be applied by spray irrigation equipment.

(2) The spray irrigation equipment to be used in the application of manure.

(3) Other information as the department may request.

f. Agricultural drainage wells. Manure shall not be applied by spray irrigation equipment on land located within an agricultural drainage well area.

g. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

h. Setback requirements for confinement feeding operations with NPDES permits. For confinement feeding operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5).

65.101(3) Surface application of liquid manure on frozen or snow-covered ground. A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES permit requirements pursuant to the Act and also shall comply with the following requirements:

a. *Snow-covered ground.* During the period beginning December 21 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on snow-covered ground only when there is an emergency.

b. *Frozen ground.* During the period beginning February 1 and ending April 1, a person may apply liquid manure originating from a manure storage structure that is part of a confinement feeding operation on frozen ground only when there is an emergency.

c. *What constitutes an emergency.* For the purposes of this subrule, an emergency application is only allowed when there is an immediate need to apply manure to comply with the manure retention requirement of subrule 65.100(1) due to unforeseen circumstances affecting the storage of the liquid manure. The unforeseen circumstances must be beyond the control of the owner of the confinement feeding operation, including but not limited to natural disaster, unusual weather conditions, or equipment or structural failure. The authorization to apply liquid manure pursuant to this subrule does not apply to either of the following:

(1) An immediate need to apply manure in order to comply with the manure retention requirement of subrule 65.100(1) caused by the improper design or management of the manure storage structure, including but not limited to a failure to properly account for the volume of the manure to be stored. Based on the restrictions described in paragraphs 65.101(3)“a” and “b” and the possibility that the ground could be snow-covered and

frozen for the entire period of December 21 to April 1, an operation should not plan to apply liquid manure during that time period. Confinement feeding operations with manure storage structures constructed after May 26, 2009, and without alternatives to manure application must have sufficient storage capacity to retain manure generated from December 21 to April 1 under normal circumstances in order to properly account for the volume of manure to be stored. For confinement feeding operations that have no manure storage structures constructed after May 26, 2009, the department will accept insufficient manure storage capacity as a reason for emergency application in the notification required in subrule 65.101(3).

(2) Liquid manure originating from a confinement feeding operation constructed or expanded on or after July 1, 2009, if the confinement feeding operation has a capacity to store manure for less than 180 days.

d. Procedure for emergency application. A person who is authorized to apply liquid manure on snow-covered ground or frozen ground when there is an emergency shall comply with all of the following:

(1) The person must notify the appropriate department field office by telephone prior to the application. The department will not consider the notification complete unless the owner's name, facility name, facility ID number, reason for emergency application, application date, estimated number of gallons of manure to be applied, and application fields as listed in the MMP are given. In cases where the emergency is not easily confirmed by weather reports, the owner must make documentation of the emergency available to the field office upon request.

(2) The liquid manure must be applied on land identified for such application in the current MMP maintained by the owner of the confinement feeding operation as required in subrule 65.111(7). The land must be identified in the current MMP prior to the application, and that change must also be reflected in the next annual update or complete MMP submitted to the department and county boards of supervisors following the application as required in paragraph 65.110(3) "b."

(3) The liquid manure must be applied on a field with a phosphorus index rating of 2 or less.

(4) Any surface water drain tile intake that is on land in the owner's MMP and located downgradient of the application must be temporarily blocked beginning not later than the time that the liquid manure is first applied and ending not earlier than two weeks after the completion of the application.

(5) Additional measures to contain runoff may be necessary in order to prevent violation of federal effluent standards in subrule 62.4(12).

e. Exceptions. Paragraphs 65.101(3) "a" through "d" do not apply to any of the following:

(1) The application of liquid manure originating from a SAFO.

(2) The application of liquid manure injected or incorporated into the soil on the same date.

567—65.102(455B,459,459B) Departmental evaluation.

65.102(1) The department may evaluate any AFO to determine if any of the following conditions exist:

a. Manure from the operation is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in subrule 65.100(1);

b. Manure from the operation is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Manure from the operation is causing or may reasonably be expected to cause a violation of state water quality standards.

65.102(2) If departmental evaluation determines that any of the conditions listed in subrule 65.102(1) exist, the operation shall institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This subrule shall apply to all permitted and unpermitted AFOs, regardless of animal capacity.

567—65.103(455B,459,459B) Construction permits—required approvals and permits. A person required to obtain a construction permit pursuant to subrule 65.103(1) or a construction approval letter pursuant to subrule 65.103(7) shall not begin construction, expansion or modification of a confinement feeding operation structure until the department issues a construction permit or a construction approval letter for a proposed or existing confinement feeding operation. In addition, the owner of a SAFO with formed manure storage structures who is not required to obtain a construction permit pursuant to subrule 65.103(1) or a construction approval letter pursuant to subrule 65.103(7) shall comply with the applicable construction approval

requirements pursuant to subrule 65.103(8).

65.103(1) *Confinement feeding operations required to obtain a construction permit prior to any of the following.* Except as provided in subrule 65.103(2), a confinement feeding operation shall obtain a construction permit prior to any of the following:

a. Constructing or installing a confinement building that uses an unformed manure storage structure or constructing, installing or modifying an unformed manure storage structure.

b. Constructing or installing a confinement building that uses a formed manure storage structure or constructing, installing or modifying a formed manure storage structure if, after construction, installation or modification, the animal unit capacity of the operation is 1,000 animal units or more. This paragraph also applies to confinement feeding operations that store manure exclusively in a dry form.

c. Initiating a change, even if no construction of, or physical alteration to, an unformed manure storage structure is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

d. Initiating a change, even if no construction of or physical alteration to, a formed manure storage structure is necessary, that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in a formed manure storage structure if, after the change, the animal unit capacity of the operation is 1,000 animal units or more. Increases in the volume of manure due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

e. Purchasing or acquiring an adjacent animal feeding confinement operation if after acquisition the animal unit capacity of the combined operation is 1,000 animal units or more. The construction permit application must be submitted within 60 days of the acquisition or purchase.

f. Constructing or modifying an egg washwater storage structure or a confinement building at a confinement feeding operation that includes an egg washwater storage structure.

g. Initiating a change, even if no construction of, or physical alteration to, an egg washwater storage structure is necessary, that would result in an increase in the volume of egg washwater or a modification in the manner in which egg washwater is stored. Increases in the volume of egg washwater due to an increase in animal capacity, animal weight capacity or animal unit capacity up to the limits specified in a previously issued construction permit do not require a new construction permit.

h. Repopulating a confinement feeding operation that had been a discontinued AFO for 24 months or more and if any of the following apply:

(1) The confinement feeding operation uses an unformed manure storage structure or egg washwater storage structure;

(2) The confinement feeding operation includes only confinement buildings and formed manure storage structures and has an animal unit capacity of 1,000 animal units or more.

i. Installing a permanent manure transfer piping system, unless the department determines that a construction permit is not required.

j. Initiating a remedial change, upgrade, replacement or construction when directed by the department as a result of departmental evaluation pursuant to rule 567—65.102(455B,459,459B) or as required by an administrative order or court order pursuant to Iowa Code section 455B.112 or 455B.175. Repairs to a confinement building or additions such as fans, slats, gates, roofs, or covers do not require a construction permit. In some instances, the department may determine that a construction permit is not required to increase the volume of manure or egg washwater or a modification in the manner in which manure or egg washwater is stored if the increase or modification is deemed insignificant. Plans for repairs or modifications to a manure storage structure shall be submitted to the department to determine if a permit is required.

65.103(2) *Confinement feeding operations not required to obtain a construction permit.*

a. A construction permit shall not be required for a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a SAFO. However, this paragraph shall not apply to a SAFO that uses an unformed manure storage structure.

b. A construction permit shall not be required for a confinement feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

c. A construction permit is not required to construct a formed manure storage structure at a confinement feeding operation having an animal unit capacity of more than 500 but less than 1,000 animal units; however, a construction approval letter is required from the department pursuant to subrule 65.103(8) and rule 567—65.104(455B,459,459B).

d. A construction permit is not required for a confinement feeding operation that exclusively confines fish and elects to comply with the permitting requirements of Iowa Code section 455B.183.

65.103(3) Operations that shall not be issued construction permits.

a. The department shall not issue a construction permit to a person if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code sections 459.317 and 459.604.

c. The department shall not issue a construction permit to expand or modify a confinement feeding operation for 120 days after completion of the last construction or modification at the operation, if a permit was not required for the last construction or modification.

65.103(4) Construction permit application plan review criteria. Review of plans and specifications submitted with a construction permit application shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control being required of the confinement feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or these rules, and U.S. Department of Commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

65.103(5) Expiration of construction permits. A construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within four years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action or a person who has a controlling interest in the proposed operation has been classified as a habitual violator. If a permitted site has not completed all proposed permitted structures within the four-year limit, then the approved animal unit capacity in the construction permit shall be lowered to be equal to what was constructed and the department shall issue a construction permit amendment for what was constructed. Once all permitted construction has been completed, no amendments for new construction may be issued even though the four-year period has not expired. A new construction permit must be issued for the new proposed construction.

65.103(6) Revocation of construction permits. The department may revoke a construction permit or refuse to renew a permit expiring according to subrule 65.103(5) if it determines that the operation of the confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.

65.103(7) Confinement feeding operations required to obtain a construction approval letter. A person planning to construct a confinement feeding operation, other than a SAFO as defined in rule 567—65.1(455B,459,459A,459B) or other than an operation required to obtain a construction permit pursuant to subrule 65.103(1), shall obtain from the department a construction approval letter as provided in subrule 65.104(2) prior to beginning construction of a formed manure storage structure or a confinement building. The construction approval letter shall expire if construction, as defined in subrule 65.6(1), is not begun within one year and completed within four years of the date of the construction approval letter.

65.103(8) SAFOs. The following requirements apply to SAFOs:

a. A construction permit shall not be required for a SAFO utilizing a formed manure storage structure; however, a construction permit is required for any unformed manure storage structures utilized at a SAFO.

b. If a SAFO cannot meet the required separation distance provided in Iowa Code section 459.310(1), a

SAFO must comply with secondary containment barrier design in accordance with subrule 65.104(5).

c. A SAFO must comply with drain tile removal requirements if the SAFO utilizes an unformed manure storage structure in accordance with subrule 65.108(1).

d. SAFO confinement structures must comply with applicable separation distance requirements in rule 567—65.106(455B,459,459B).

65.103(9) *Compliance with permit conditions.* A person who constructs, modifies or expands a confinement feeding operation pursuant to a construction permit shall comply with all terms and conditions of the construction permit.

567—65.104(455B,459,459B) Preconstruction submittal requirements. Prior to beginning construction, expansion or modification of a confinement feeding operation structure, a person shall obtain from the department a construction permit pursuant to subrule 65.103(1), a construction approval letter pursuant to subrule 65.103(7) or approval of a secondary containment barrier design pursuant to subrule 65.104(5), according to procedures established in this rule.

65.104(1) *Construction permit application.* Application for a construction permit for a confinement feeding operation shall be made on a form provided by the department. The application shall include all of the information required in the form. At the time the department receives a complete application, the department shall make a determination regarding the approval or denial of the permit in accordance with subrule 65.105(5). A construction permit application for a confinement feeding operation shall be filed as instructed on the form and shall include the following:

a. The name of the applicant and the name of the confinement feeding operation, including mailing address and telephone number.

b. The name of the current landowner or the proposed landowner of the land where the confinement feeding operation will be located.

c. The contact person for the confinement feeding operation, including mailing address and telephone number.

d. The location of the confinement feeding operation.

e. Whether the application is for the expansion of an existing operation or the construction of a proposed confinement feeding operation, and the date when it was first constructed if an existing operation.

f. The animal unit capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation. If the confinement feeding operation includes a confinement feeding operation structure that was constructed prior to March 1, 2003, the animal weight capacity by animal species of the current confinement feeding operation to be expanded, if applicable, and of the proposed confinement feeding operation shall also be included.

g. Engineering documents. A confinement feeding operation that utilizes an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure at an operation that meets the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall include an engineering report, construction plans and specifications. The engineering report, construction plans and specifications must be prepared and signed by a licensed PE or by an NRCS-qualified staff person, must detail the proposed structures, and must include a statement certifying that the manure storage structure complies with the requirements of Iowa Code chapter 459. In addition, a qualified soils or groundwater professional, licensed PE or NRCS-qualified staff person shall submit a hydrogeologic report on soil corings in the area of the unformed manure storage structure or egg washwater storage structure as described in subrules 65.108(5) and 65.108(9).

h. Construction design statement or PE design certification. A confinement feeding operation that uses a formed manure storage structure and that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall submit a construction design statement pursuant to subrule 65.104(3) or a PE design certification pursuant to subrule 65.104(4). All elevations shall be in NAV 88 datum for sites with alluvial soils or floodplain requirements.

i. Payment to the department of the indemnity fund fee as required in Iowa Code section 459.502.

j. If the construction permit application is for three or more confinement feeding operation structures, a drainage tile certification shall be submitted as follows:

(1) If the application is for an unformed manure storage structure, an egg washwater storage structure or a formed manure storage structure that meets the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B), a licensed PE shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.

(2) If the application is for a formed manure storage structure that does not meet the threshold engineering requirements, a drainage tile certification shall be submitted as part of the construction design statement pursuant to subrule 65.104(3) or as part of the PE design certification pursuant to subrule 65.104(4).

k. Information (e.g., maps, drawings, aerial photos) that clearly shows the proposed location of the confinement feeding operation structures; any existing confinement feeding operation structures; any locations or objects from which a separation distance is required by Iowa Code sections 459.202, 459.203 and 459.310; and that the structures will meet all applicable separation distances. If applicable, a copy of a recorded separation distance waiver, pursuant to paragraph 65.107(1) “*b*,” must be included with the application. Also, if applicable, a secondary containment barrier design, pursuant to subrules 65.104(5) and 65.107(7), shall be included.

l. The names of all parties with an interest or controlling interest in the confinement feeding operation who also have an interest or controlling interest in at least one other confinement feeding operation in Iowa, and the names and locations of such other operations; for a partnership or corporation owning the confinement feeding operation, a list of all members and their percentage of ownership in the partnership or corporation.

m. Copies of the MMP pursuant to rule 567—65.110(455B,459,459B).

n. A construction permit application fee of \$250 and the MMP filing fee of \$250 as required in subrule 65.110(7).

o. A copy of the AFO Siting Atlas indicating the location of the proposed structure, with the one hundred year floodplain and karst layers included.

p. A copy of any master matrix evaluation provided to the county.

q. A livestock odor mitigation evaluation certificate issued by Iowa State University as provided in Iowa Code section 266.49. The applicant is not required to submit the certificate if any of the following apply:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to Iowa Code section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location that is less than twice the minimum separation distance required pursuant to Iowa Code section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

(3) The applicant submits a document swearing that Iowa State University has failed to furnish a certificate to the applicant within 45 days after the applicant requested Iowa State University to conduct a livestock odor mitigation evaluation as provided in Iowa Code section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa State University does not provide for a livestock odor mitigation evaluation effort as provided in Iowa Code section 266.49, for any reason, including because funding is not available.

r. Documentation that copies of all the construction permit application documents have been provided to the county board of supervisors or county auditor in the county where the operation or structure subject to the permit is to be located, and documentation of the date received by the county.

65.104(2) Construction approval letter.

a. A confinement feeding operation that, pursuant to subrule 65.103(7), is required to obtain a construction approval letter as defined in rule 567—65.1(455B,459,459A,459B), but that is not required to obtain a construction permit pursuant to subrule 65.103(1), shall file with the department, at least 30 days prior to the date the proposed construction is scheduled to begin, all of the following:

(1) A construction design statement pursuant to subrule 65.104(3). In lieu of a construction design statement, a PE design certification pursuant to subrule 65.104(4) may be submitted.

(2) A copy of the MMP pursuant to rule 567—65.110(455B,459,459B).

(3) Information (e.g., maps, drawings, aerial photos) that clearly shows the intended location of the confinement feeding operation structures and animal weight capacities of any other confinement feeding operations within a distance of 2,500 feet in which the owner has an ownership interest or which the owner manages.

(4) A fee of \$250 for filing an MMP pursuant to subrule 65.110(7) and a manure storage indemnity fee pursuant to subrule 65.110(6).

(5) Documentation that the board of supervisors or auditor of the county where the confinement feeding operation structure is proposed to be located received a copy of the MMP.

b. After submission of items in subparagraphs 65.104(2)“a”(1) through 65.104(2)“a”(5) and prior to issuance of the construction approval letter, the confinement feeding operation may make nonsubstantial revisions to the items and maintain the date construction is scheduled to begin.

65.104(3) Construction design statement. Prior to beginning construction of a formed manure storage structure, a person planning construction at a confinement feeding operation, other than a SAFO, that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall file with the department a construction design statement, as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is required to obtain a construction approval letter from the department pursuant to subrule 65.103(7) but that is not required to obtain a construction permit pursuant to subrule 65.103(1) shall file with the department a construction design statement, as required in subrule 65.104(2). Within 30 days after the filing of a construction design statement, the department may issue a construction approval letter as defined in rule 567—65.1(455B,459,459A,459B) if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation that has an animal unit capacity of 1,000 animal units or more but that is below the threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B) shall file a construction design statement as part of the construction permit application and as required in subrule 65.104(1).

c. The construction design statement shall be filed on a form provided by the department and shall include all of the following:

(1) The name of the person planning construction at the confinement feeding operation, the name of the confinement feeding operation, the location of the proposed formed manure storage structure, a detailed description of the type of confinement feeding operation structure being proposed, the dimensions of the structure, and whether the structure will be constructed of reinforced concrete or steel.

(2) An MMP pursuant to rule 567—65.110(455B,459,459B).

(3) A certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the minimum concrete standards set forth in subrule 65.108(10). Otherwise, if the formed manure storage structure is to be constructed of steel, including a Slurrystore® tank, a certification signed by the person responsible for constructing the formed manure storage structure that the proposed formed manure storage structure will be constructed according to the requirements of Iowa Code chapter 459 and this chapter.

(4) If the confinement feeding operation is also required to obtain a construction permit at a confinement feeding operation proposing three or more confinement feeding operation structures, the construction design statement shall include a drainage tile certification signed by the person responsible for constructing or excavating the formed manure storage structure, shall certify that construction will not impede established existing drainage, and shall verify that if existing drainage tiles are found, corrective actions will be implemented to immediately reestablish existing drainage.

d. The following operations are not required to file a construction design statement with the department:

(1) A SAFO that constructs a formed manure storage structure.

(2) A confinement feeding operation that submits a PE design certification pursuant to this subrule.

(3) A confinement feeding operation that meets or exceeds threshold requirements for an engineer as defined in rule 567—65.1(455B,459,459A,459B).

(4) A confinement feeding operation that utilizes an unformed manure storage structure or an egg washwater storage structure.

65.104(4) PE design certification. In lieu of a construction design statement prior to beginning construction of a formed manure storage structure, a confinement feeding operation, other than a SAFO, that is below the threshold requirements for an engineer pursuant to rule 567—65.1(455B,459,459A,459B) may file with the department a PE design certification and design plans signed by a PE licensed in the state of Iowa or an NRCS-qualified staff person. The PE design certification shall be site-specific and shall be filed on a form provided by the department as follows:

a. A confinement feeding operation with an animal unit capacity of more than 500 but less than 1,000 animal units that is not required to obtain a construction permit pursuant to subrule 65.103(1) shall file with the department, at least 30 days before beginning construction of a formed manure storage structure, the PE design certification as required in subrule 65.104(2). Within 30 days after the filing of a PE design certification, the department may issue a construction approval letter if the proposed formed manure storage structure meets the requirements of this chapter.

b. A confinement feeding operation with an animal unit capacity of 1,000 animal units or more that is required to obtain a construction permit pursuant to subrule 65.103(1) but that is below the threshold requirements for an engineer pursuant to rule 567—65.1(455B,459,459A,459B) shall file with the department the PE design certification as part of the construction permit application and as required in subrule 65.104(1).

65.104(5) Secondary containment barrier design submittal requirements. The design for a secondary containment barrier to qualify any confinement feeding operation for the separation distance exemption provision in subrule 65.107(7) shall be filed with the department for approval prior to beginning construction of a formed manure storage structure that is part of a SAFO, shall accompany the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required, or shall be filed as part of the construction permit application pursuant to subrule 65.104(1). The secondary containment barrier shall meet the design standards of subrule 65.108(11) and shall be prepared according to the following:

a. If a manure storage structure stores liquid or semiliquid manure, the secondary containment barrier design shall include engineering drawings prepared and signed by a PE licensed in the state of Iowa or an NRCS-qualified staff person. For purposes of this subrule only, “semiliquid manure” means manure that contains a percentage of dry matter that results in manure too solid for pumping but too liquid for stacking.

b. If the manure storage structure will store only dry manure or dry bedded manure, the owner or a representative of a confinement feeding operation may submit to the department detailed drawings of the design for a secondary containment barrier.

567—65.105(455B,459,459B) Construction permit application review process, site inspections and complaint investigations.

65.105(1) Delivery of application to county. The applicant for a construction permit for a confinement feeding operation or related AFO structure shall deliver in person or by certified mail a copy of the permit application and MMP to the county board of supervisors of the county where the confinement feeding operation or related AFO structure is proposed to be constructed. Receipt of the application and MMP by the county auditor or other county official or employee designated by the county board of supervisors is deemed receipt of the application and MMP by the county board of supervisors. Documentation of the delivery or mailing of the permit application and MMP shall be forwarded to the department.

65.105(2) Public notice and county comment.

a. Public notice. The county board of supervisors shall publish a notice that the board has received the construction permit application in a newspaper having general circulation in the county. The county board shall publish the notice as soon as possible but no later than 14 days after receiving instructions from the department that a complete application has been received. The notice shall include all of the following:

- (1) The name of the person applying to receive the construction permit;
- (2) The name of the township where the confinement feeding operation structure is to be constructed;
- (3) Each type of confinement feeding operation structure proposed to be constructed;
- (4) The animal unit capacity of the confinement feeding operation if the construction permit were to be approved;

(5) The time when and the place where the application may be examined as provided in Iowa Code section 22.2;

(6) Procedures for providing public comments to the board as provided by the board.

The county shall submit to the department, within 30 days of receipt of the construction permit application, proof of publication to verify that the county provided public notice as required in this paragraph.

b. County comment. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the board may submit to the department comments by the board and the public regarding compliance of the construction permit application and MMP with the requirements in this chapter and Iowa Code chapter 459 for obtaining a construction permit. Comments may include but are not limited to the following:

(1) The existence of an object or location not included in the construction permit application that benefits from a separation distance requirement as provided in Iowa Code section 459.202 or 459.310.

(2) The suitability of soils and the hydrology of the site where construction or expansion of a confinement feeding operation or related AFO structure is proposed.

(3) The availability of land for the application of manure originating from the confinement feeding operation.

(4) Whether the construction or expansion of a proposed AFO structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

65.105(3) Master matrix. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the director of the department for filing. Adoption and filing of a construction evaluation resolution authorizes a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix as follows:

a. Enrollment periods.

(1) The county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 of each year to evaluate construction permit applications received by the department between February 1 of that year and January 31 of the following year.

(2) Filed construction evaluation resolutions shall remain in effect until the applicable enrollment period expires or until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, whichever is earlier.

(3) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements in paragraph 65.10(3)“*b*,” the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.

b. Use of the master matrix. If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.105(3)“*a*,” the board shall evaluate all construction permit applications filed during the applicable period using the master matrix as follows:

(1) In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria that are part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into an MMP as provided in Iowa Code section 459.312.

(2) The board shall include with the adopted recommendation a copy of the master matrix analysis, calculations, and scoring for the application. The board’s adopted recommendation submitted to the department may be based on the master matrix or on comments received by the board. The adopted recommendation shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

(3) The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction or expansion is for expansion of a confinement feeding operation that includes a confinement feeding operation structure

constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its animal unit capacity is 1,666 animal units or less. The board may still submit comments regarding the application.

65.105(4) *Inspection of proposed construction site.* The department may conduct an inspection of the site on which construction of the confinement feeding operation is proposed after providing a minimum of 24 hours' notice to the construction permit applicant or sooner with the consent of the applicant. If the county in which the proposed facility is located has adopted and submitted a construction evaluation resolution pursuant to subrule 65.105(3) and has not failed subsequently to submit an adopted recommendation, the county may designate a county employee to accompany a department official during the site inspection. In such cases, the department shall notify the county board of supervisors or county designee at least three days prior to conducting an inspection of the site where construction of the confinement feeding operation is proposed. The county designee shall have the same right to access to the site's real estate on which construction of the confinement feeding operation is proposed as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official. The departmental official and the county designee shall comply with standard biosecurity requirements customarily required by the owner of the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

65.105(5) *Determination by the department.* The department must receive the county board of supervisors' comments or evaluation for approval or disapproval of an application for a construction permit not later than 30 days following the applicant's delivery of a complete application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must render a determination or a preliminary determination to approve or disapprove an application for a construction permit within 60 days following the applicant's delivery of a complete application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may terminate an application if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department will approve or disapprove an application as follows:

a. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and submits an adopted recommendation to approve the construction permit application, which may be based on a satisfactory rating produced by the master matrix, to the department, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B.

c. If the board submits to the department an adopted recommendation to disapprove an application for a

construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B, regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall preliminarily disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code chapters 455B, 459, 459A and 459B.

65.105(6) *Departmental notification of permit application decision.* Within three days following the department's determination or preliminary determination to approve or disapprove the application for a construction permit, the department shall deliver a notice of the decision to the applicant.

a. If the county board of supervisors has submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department shall notify the board of the department's preliminary decision to approve or disapprove the application at the same time. For a preliminary decision to approve an application, the notice shall consist of a copy of the draft construction permit. For a preliminary decision to disapprove an application, the notice shall consist of a copy of the department's letter of preliminary denial. The preliminary decision to approve or disapprove an application becomes final without further proceedings if neither the county board of supervisors nor the applicant demands a hearing before the commission or appeals pursuant to subrules 65.105(7) and 65.105(8).

b. If the county board of supervisors has not submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department notice shall include the construction permit or letter of denial. The applicant may appeal the permit or denial as provided in subrule 65.105(8).

65.105(7) *County board of supervisors' demand for hearing.*

a. A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing before the commission. The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the board's receipt of the department's notice of preliminary decision. A county board of supervisors that has submitted an adopted recommendation to the department may waive the right to file a demand for hearing following the receipt of the department's notice of preliminary decision by filing a written notice of waiver with the department.

b. The demand for hearing shall include a statement setting forth all of the county board of supervisors' reasons why the application for a permit should be approved or disapproved, including legal briefs and all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

65.105(8) *Applicant's demand for hearing.* The applicant may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written intent to demand a hearing and a demand for a hearing. The applicant may elect, as part of the written demand for hearing, to have the hearing conducted before the commission pursuant to paragraph 65.105(8)"a" or before an administrative law judge pursuant to paragraph 65.105(8)"b." If no such election is made, the demand for hearing shall be considered to be a request for hearing before the commission. If both the applicant and the county board of supervisors are contesting the department's preliminary decision, the applicant may request that the commission conduct the hearing on a consolidated basis.

a. *Applicant demand for hearing before the commission.* The intent to demand a hearing shall be sent to the director of the department and must be postmarked no later than 14 days following the board's receipt of

the department's notice of preliminary decision. The demand for hearing shall be sent to the director of the department and must be postmarked no later than 30 days following the applicant's receipt of the department's notice of preliminary decision. If the county board of supervisors has filed a demand for hearing, the times for facsimile notification and filing a demand for hearing are extended an additional three business days. It is the responsibility of the applicant to communicate with the department to determine if a county demand for hearing has been filed. The demand for hearing shall include a statement setting forth all of the applicant's reasons why the application for permit should be approved or disapproved, including legal briefs and all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

b. Applicant contested case appeal before an administrative law judge. The applicant may contest the department's preliminary decision to approve or disapprove an application according to the contested case procedures set forth in 561—Chapter 7; however, if the county board of supervisors has demanded a hearing pursuant to subrule 65.105(7), the applicant shall provide facsimile notification to the department within the time frame set forth in paragraph 65.105(7)“a” that the applicant intends to contest the department's preliminary decision according to contested case procedures. In that event, the applicant may request that the hearings be consolidated and conducted as a contested case.

65.105(9) Hearing and decision by the commission.

a. Hearing before the commission.

(1) All hearings before the commission requested pursuant to subrules 65.105(7) and 65.105(8) shall be handled as other agency action and not as a contested case.

(2) Upon receipt of a timely demand for a hearing before the commission pursuant to subrules 65.105(7) or 65.105(8), the director shall set a hearing during a regular meeting of the commission scheduled no more than 35 days from the date the director receives the first such request. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule a special in-person meeting or an electronic meeting of the commission pursuant to Iowa Code section 21.8.

(3) No later than five days from the date the director receives a demand for hearing, the director shall post on the department's website the demand for hearing and associated documents, letters notifying the parties of the hearing date, and the department's complete file on the application under review. The director shall provide hard copies of these documents to members of the commission as requested by each member. The director shall contact the applicant and the county board of supervisors and provide copies of documents they request.

(4) No later than 15 days from the date set for hearing, the applicant, the county board of supervisors and the department shall, if any chooses to do so, send one copy of a reply brief to respond to issues raised in the demand for hearing and any supporting documentation to the department. The director shall post the briefs and associated written documents on the department's website and provide hard copies to members of the commission as requested by each member. No further briefs or documents shall be permitted except upon request and permission of the commission.

(5) No later than 15 days from the date set for hearing, any person may submit written material for the commission to review. Whether such material is accepted into the record will be the decision of the chairperson of the commission depending on whether the chairperson deems it relevant to the appeal.

(6) The commission shall use the following hearing procedures:

1. All written material accepted by the chairperson of the commission for inclusion in the record at the hearing shall be marked as coming from the person or entity presenting the document.

2. Objections to submitted written material shall be noted for the record.

3. Oral participation before the commission shall be limited to time periods specified by the chairperson of the commission and, unless otherwise determined by the commission, to presentations by representatives for the applicant, the county board of supervisors and the department and by technical consultants or experts designated by the commission. Representatives of the department shall not advocate for either the county board of supervisors or the applicant but may summarize the basis for the department's preliminary decision and respond to questions by members of the commission.

4. Members of the commission, and the commission's legal counsel, may ask questions of the

representatives for the applicant, the county board of supervisors and the department and of technical consultants or experts designated by the commission. The members and counsel may also ask questions of any other person or entity appearing or in attendance at the hearing. Representatives for the applicant and the county board of supervisors may ask questions of technical consultants or experts designated by the commission. No other persons or entities may ask questions of anyone making a presentation or comment at the hearing except upon request and permission by the chairperson of the commission.

(7) The commission shall use the following hearing format:

1. Announcement by the chairperson of the commission of the permit application under review.
2. Receipt into the hearing record of the demand or demands for hearing, a copy of the department's complete file on the application under review and the briefs and written documents previously provided by the applicant and county board of supervisors pursuant to subparagraph 65.105(9) "a"(4).
3. Oral presentation, if any, by the applicant if that party timely requested the hearing. If the applicant did not timely request the hearing, then the county board of supervisors shall make the first presentation.
4. Oral presentation, if any, by the applicant or county board of supervisors, whichever party did not have the opportunity to make the first presentation.
5. Oral presentation, if any, by the department.
6. Oral presentation, if any, by technical consultants or experts designated by the commission to assist in its establishment of a record at the hearing. No later than seven days prior to the hearing, the commission shall notify the applicant and the board of the names, addresses and professional capacity of any such technical experts or consultants.
7. Discussion by the commission, motion and final decision on whether the application for permit is approved or disapproved.

(8) Only the issues submitted by the parties in the demand for hearing and responses shall be considered by the commission as a basis for its decision.

b. Decision by the commission. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. If the commission reverses or modifies the department's decision, the department shall issue the appropriate permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

567—65.106(455B,459,459B) Confinement feeding operation and stockpile separation distance requirements. All confinement feeding operation structures, stockpiles and qualified stockpile structures shall be separated from locations and objects as specified in this rule regardless of whether a construction permit is required. The separation distance requirements of this rule shall apply to all confinement feeding operation structures, unless specifically stated otherwise. If two or more confinement feeding operations are considered one operation as provided in rule 567—65.1(455B,459,459A,459B), definitions of "adjacent—air quality" and "adjacent—water quality," the combined animal unit capacities of the individual operations shall be used for the purpose of determining the required separation. Exemptions to the following requirements are allowed to the extent provided in rule 567—65.107(455B,459,459B).

65.106(1) *Separation distance from residences, businesses, churches, schools and public use areas for new confinement feeding operations.* Separation from residences, businesses, churches, schools and public use areas shall be as specified in Iowa Code section 459.202 and summarized in Table 6 located at iowadnr.gov/afo/rules. The residence, business, church, school or public use area must exist at the time an applicant submits an application for a construction permit to the department, at the time an MMP or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the confinement feeding operation structure begins if a 65 or construction approval letter is not required.

65.106(2) *Separation distance from residences, businesses, churches, schools and public use areas for the expansion of prior constructed operations.* Except as provided in rule 567—65.107(455B,459,459B) or as specified in Iowa Code section 459.203, an existing confinement feeding operation may be expanded if any of the following applies:

a. For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to

that structure as provided in Iowa Code sections 459.202(1) and 459.202(3) and summarized in Tables 6c (for swine, sheep, horses and poultry) and 6d (for beef and dairy cattle) located at iowadnr.gov/afo/rules.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(2) and 459.202(3) and summarized in Tables 6a (for swine, sheep, horses and poultry) and 6b (for beef and dairy cattle) located at iowadnr.gov/afo/rules.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in Iowa Code sections 459.202(4) and 459.202(5) and summarized in Table 6 located at iowadnr.gov/afo/rules.

65.106(3) *Separation distance from water sources, major water sources, known sinkholes and agricultural drainage wells.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a SAFO. Separation distances from any confinement feeding operation structure to surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources and major water sources shall be as specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules. For the required separation distance to a major water source to apply, the major water source must be included in Table 1 located at iowadnr.gov/afo/rules at the time an applicant submits an application for a construction permit to the department, at the time an MMP or construction design statement is filed with the department if a construction permit is not required, or at the time construction of the AFO structure if a construction permit, MMP or construction design statement is not required.

65.106(4) *Separation distance from designated wetlands.* Separation distances specified in this subrule shall apply to any confinement feeding operation structure, including a SAFO. A confinement feeding operation structure shall not be constructed closer than 2,500 feet away from a “designated wetland” as defined and referenced in rule 567—65.1(455B,459,459A,459B). This requirement shall not apply to a confinement feeding operation structure if any of the following occur before the wetland is included in “Designated Wetlands in Iowa”:

a. The confinement feeding operation structure already exists. This exemption also applies to additional confinement feeding operation structures constructed at the site of such an existing confinement feeding operation structure after a wetland is included in “Designated Wetlands in Iowa.”

b. Construction of a confinement feeding operation structure has begun as provided in subrule 65.6(1).

c. An application for a permit to construct a confinement feeding operation structure has been submitted to the department.

d. An MMP concerning a proposed confinement feeding operation structure for which a construction permit is not required has been submitted to the department.

65.106(5) *Separation distance from water wells.* For a confinement feeding operation structure constructed after March 20, 1996, the separation distance to water wells shall be as specified in Tables 6 to 6d located at iowadnr.gov/afo/rules.

65.106(6) *Separation distance from public thoroughfares.* A confinement feeding operation structure shall not be constructed or expanded within 100 feet from the right-of-way or a public easement of a public thoroughfare.

65.106(7) *Stockpile and qualified stockpile structures—separation distance from residences.* A stockpile or qualified stockpile structure shall not be placed closer than 1,250 feet from a residence not owned by the titleholder of the land where the stockpile is located, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

65.106(8) *Stockpile and qualified stockpile structures—separation distance from tile inlets, designated areas, high-quality water resources, agricultural drainage wells and known sinkholes.* A stockpile or qualified stockpile structure shall not be placed within the following distances from any of the following:

a. A terrace tile inlet or surface tile inlet, 200 feet, unless the dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the terrace tile inlet or surface tile inlet. A terrace tile inlet or surface tile inlet does not include a tile inlet that is not directly connected to a tile

line that discharges directly into a water of the state.

b. Designated area, 400 feet. However, an increased separation distance of 800 feet shall apply to all of the following:

- (1) A high-quality water resource.
- (2) An agricultural drainage well (400 feet for dry bedded manure).
- (3) A known sinkhole (400 feet for dry bedded manure).

c. Paragraph 65.106(8) “b” does not apply if dry manure is stockpiled in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the designated area.

65.106(9) Measurement of separation distances. Except as provided in paragraph 65.106(9) “f,” the distance between confinement feeding operation structures and locations or objects from which separation is required shall be measured horizontally by standard survey methods between the closest point of the location or object (not a property line) and the closest point of the confinement feeding operation structure. The department may require that a separation distance be measured and certified by a licensed land surveyor, a PE licensed in the state of Iowa, or an NRCS-qualified staff person in cases where the department cannot confirm a separation distance. For purposes of this subrule, structure shall not include areas that do not house animals or store manure or litter.

a. Measurement to an unformed manure storage structure shall be to the point of maximum allowable level of manure pursuant to paragraph 65.100(1) “b.”

b. Measurement to a public use area shall be to the facilities that attract the public to congregate and remain in the area for significant periods of time, not to the property line.

c. Measurement to a major water source or water source shall be to the top of the bank of the stream channel of a river or stream or the ordinary high-water mark of a lake, reservoir or designated wetland.

d. Measurement to a public thoroughfare shall be to the closest point of the right-of-way.

e. The separation distance for a confinement feeding operation structure qualifying for the exemption to separation distances under paragraphs 65.107(4) “b” and “c” shall be measured from the closest point of the confinement feeding operation structure.

f. Measurement to a cemetery shall be to the closest point of its property line.

g. Measurement to a stockpile shall be to the closest point of the stockpile.

567—65.107(455B,459,459B) Exemptions to confinement feeding operation and stockpile separation distance requirements and prohibition of construction on the one hundred year floodplain.

65.107(1) Exemptions to separation distance requirements from a residence, business, church, school and public use area. As specified in Iowa Code section 459.205, the separation distances required from residences, businesses, churches, schools and public use areas specified in Iowa Code sections 459.202 and 459.204B and required in subrules 65.106(1), 65.106(2), and 65.106(7), including Tables 6 to 6d located at iowadnr.gov/af/rules, shall not apply to the following:

a. A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a SAFO or if the stockpile consists of dry manure originating from a SAFO.

b. A confinement feeding operation structure that is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or qualified stockpile structure is located, under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section 459.202. A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required or as part of the construction permit application documents pursuant to subrule 65.104(1).

c. A confinement feeding operation structure that is constructed or expanded closer than the separation distances required in subrule 65.106(1) and 65.106(2), including Tables 6 to 6d located at

iowadnr.gov/afo/rules, if the residence, business, church or school was constructed or expanded after the date that the confinement feeding operation commenced operating or if the boundaries of the public use area or the city expanded after the date that the confinement feeding operation commenced operating. A confinement feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the confinement feeding operation does not change the date the operation commenced operating.

d. The stockpile consists of dry manure originating exclusively from a confinement feeding operation that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.

65.107(2) *Exemptions to separation distance requirements from public thoroughfares.* As specified in Iowa Code section 459.205, the separation required from public thoroughfares specified in Iowa Code section 459.202 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules shall not apply to any of the following:

a. A confinement building or a formed manure storage structure that is part of a SAFO. However, the exemptions of this subrule shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

b. If the state or a political subdivision constructing or maintaining the public thoroughfare executes a written waiver with the titleholder of the land where the confinement feeding operation structure is located. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.104(2) if a construction permit is not required, or as part of the construction permit application documents pursuant to subrule 65.104(1).

65.107(3) *Exemptions to separation distance requirements for prior constructed operations and for operations that expand based on prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and that does not comply with the statute's distance requirement may continue to operate regardless of the distance requirement and may expand as provided in subrule 65.106(2).

65.107(4) *Exemptions to separation distance requirements for prior constructed operations that expand and cannot comply with prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under Iowa Code section 459.202 and that does not comply with the distance requirements established in rule 567—65.106(455B,459,459B) and the exemption in subrule 65.107(3) may be expanded if all of the following apply to the expansion:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required in Iowa Code section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

1. May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

2. January 1, 1999, for a confinement feeding operation that only includes a confinement feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

1. An animal weight capacity of 625,000 pounds for animals other than cattle.

2. An animal weight capacity of 1,600,000 pounds for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) 1,000 animal units.

65.107(5) *Exemptions to separation distance requirements for prior constructed operations that replace an unformed manure storage structure.* As specified in Iowa Code section 459.203, a confinement feeding operation that includes a confinement feeding operation structure that is constructed prior to March 1, 2003, may be expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any 14-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under Iowa Code section 459.202 than any other confinement feeding operation structure that is part of the operation.

65.107(6) *Exemption to separation distance requirements from cemeteries.* As specified in Iowa Code section 459.205, the separation distance required between a confinement feeding operation structure and a cemetery shall not apply if the confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

65.107(7) *Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment.* As specified in Iowa Code section 459.310(3), the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources and designated wetlands, specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to a farm pond or privately owned lake as defined in Iowa Code section 462A.2, or to a confinement building, a manure storage structure or an egg washwater storage structure constructed with a secondary containment barrier according to subrule 65.108(11). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.104(5) prior to beginning construction of the confinement feeding operation structure.

65.107(8) *Exemptions to prohibition on one hundred year floodplain construction and separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands—replacement formed manure storage structures.* As specified in Iowa Code section 459.310(4), a separation distance required in subrules 65.106(3) and 65.106(4) or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subrule 65.9(1) shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the replacement formed manure storage structures during any 18-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subrules 65.106(3) and 65.106(4) than any other confinement feeding operation structure that is part of the operation.

(5) The replacement formed manure storage structure meets or exceeds the requirements of Iowa Code

section 459.307 and subrule 65.108(10).

b. A replacement formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a waiver granted by the department. In granting the waiver, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to Iowa Code section 459.307 and subrule 65.108(10).

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the waiver, require that the replaced manure storage structure be properly closed.

567—65.108(455B,459,459B) Manure storage structure design requirements. The requirements in this rule apply to all confinement feeding operation structures unless specifically stated otherwise.

65.108(1) Drainage tile removal for new construction of a manure storage structure. Prior to constructing a manure storage structure, other than storage of manure in an exclusively dry form, the site for the AFO structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. An inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm prior to excavation for an unformed manure storage structure.

b. Drainage tile lines discovered during the tile inspection of an unformed manure storage structure shall be removed and rerouted in or in an area outside the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of berm.

c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, or plugged with concrete, Portland cement concrete grout or similar materials. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located even if located under the floor; however, the tile lines must be tied into the perimeter drain tile.

d. Other proven methods approved by the department may be utilized to discover drainage tile lines.

e. The requirements of this subrule do not apply if sufficient information is provided that allows the department to conclude that the location does not have a history of drainage tile.

65.108(2) Drainage tile removal around an existing manure storage structure. The owner of an aerobic structure, anaerobic lagoon or earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before March 20, 1996, but after December 31, 1992, shall inspect for drainage tile lines as provided in this subrule, and all applicable records of known drainage tiles shall be examined. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, that is part of a confinement feeding operation with a construction permit granted before January 1, 1993, but after May 31, 1985, shall inspect for drainage tiles as provided in this subrule, and all applicable records of known drainage tiles shall be examined. Drainage tile lines shall not be installed within the separation distance provided in paragraph 65.108(1)“*b*” once the basin has been constructed.

a. Inspection shall be by digging an inspection trench of at least ten inches wide around the structure to a depth of at least 6 feet from the original grade and within 25 feet from the outside edge of the berm. The owner first shall inspect the area where trenching is to occur and manure management records to determine if there is any evidence of leakage and, if so, shall contact the department for further instructions as to proper inspection

procedures. The owner of a confinement feeding operation shall either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 25 feet would require the inspection trench to go onto the adjoining property.

b. The owner of the confinement feeding operation may utilize other proven methods approved by the department to discover drainage tile lines.

c. The drainage tile lines discovered near an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, shall be removed within 25 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the aerobic structure, anaerobic lagoon or earthen manure storage basin shall be rerouted within 25 feet from the berm to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, or Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines. Drainage tile lines that were installed at the time of construction to lower a groundwater table may either be avoided if the location is known or may remain at the location if discovered.

d. The owner of an aerobic structure, anaerobic lagoon, earthen manure storage structure or an earthen waste slurry storage basin with a tile drainage system to artificially lower the groundwater table shall have a device to allow monitoring of the water in the drainage tile lines that lower the groundwater table and to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin is located.

e. If the owner of the confinement feeding operation discovers drainage tile that projects underneath the berm, the owner shall follow one of the following options:

(1) Contact the department to obtain permission to remove the drainage tile under the berm. The manure in the structure must be lowered to a point below the depth of the tile prior to removing the drainage tile from under the berm. Prior to using the structure, a new percolation test must be submitted to the department and approval received from the department.

(2) Grout the length of the tile under the berm to the extent possible. The material used to grout shall include concrete, Portland cement concrete grout or similar materials.

f. A waiver to this subrule may be granted by the director if sufficient information is provided that the location does not have a history of drainage tile.

g. A written record describing the actions taken to determine the existence of tile lines, the findings, and actions taken to comply with this subrule shall be prepared and maintained as part of the MMP records.

65.108(3) *Earthen waste slurry storage basins.* An earthen waste slurry storage basin shall have accumulated manure removed at least twice each year, unless there is sufficient basin capacity to allow removal of manure once each year and maintain freeboard as determined pursuant to paragraph 65.100(1)“b.”

65.108(4) *Earthen manure storage basins.* An earthen manure storage basin shall have accumulated manure removed at least once each year. An earthen manure storage basin constructed after [the effective date of these rules] must have enough manure storage capacity for eight months. An earthen manure storage basin may have enough manure storage capacity to contain the manure from the confinement feeding operation for up to 14 months and maintain freeboard as determined pursuant to paragraph 65.100(1)“b.”

65.108(5) *Soil testing for earthen structures.* Applicants for construction permits for earthen manure storage structures shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-06, effective May 1, 2006, or D 2488-06, effective November 1, 2006. Soil corings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Soil corings shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil corings shall be submitted with a construction permit application and shall include a description of the geologic units encountered; a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin and a discussion that addresses the suitability of the proposed structure at the site. All soil corings shall be taken by a method that identifies the continuous soil

profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

a. A minimum of four soil corings reflecting the continuous soil profile is required for each anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin. Corings which are intended to represent soil conditions at the corner of the structure must be located within 50 feet of the bottom edge of the structure and spaced so that one coring is as close as possible to each corner. Should there be no bottom corners, corings shall be equally spaced around the structure to obtain representative soil information for the site. An additional coring will be required if necessary to ensure that one coring is at the deepest point of excavation. For an anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin larger than four acres water surface area, one additional coring per acre is required for each acre above four acres surface area.

b. All corings shall be taken to a minimum depth of ten feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin.

c. At least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the anaerobic lagoon, aerobic structure, earthen egg washwater storage structure, or earthen manure storage basin or into bedrock, whichever is shallower.

d. Upon abandonment of the soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

65.108(6) Hydrology.

a. Groundwater table. A minimum separation of four feet between the top of the liner for any unformed manure storage structure or earthen egg washwater storage structure and the groundwater table is recommended; however, in no case shall the top of the liner for an unformed manure storage structure or earthen egg washwater storage structure be below the groundwater table. If the groundwater table is less than two feet below the top of the liner for an unformed manure storage structure or earthen egg washwater storage structure, the unformed manure storage structure or earthen egg washwater storage structure shall be provided with a synthetic liner as described in paragraph 65.108(8) "f."

b. Permanent artificial lowering of groundwater table.

(1) Unformed manure storage structures. The groundwater table around an unformed manure storage structure or earthen egg washwater storage structure may be artificially lowered to levels required in paragraph 65.108(6) "a" by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. Detailed engineering and soil drainage information shall be provided with a construction permit application for an unformed manure storage structure or earthen egg washwater storage structure if a drainage system for artificially lowering the groundwater table will be installed. The level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table. If a drainage tile around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. Drainage tile lines shall be installed between the outside of the proposed toe of the berm and within 25 feet of the outside of the toe of the berm. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located.

(2) Formed manure storage structures. For a formed manure storage structure or a formed egg washwater storage structure, partially or completely constructed below the normal soil surface, a perimeter tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. The perimeter tile shall include a sample port to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the drainage tile

lines if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located or if the perimeter tile is connected to an existing tile. The perimeter tile may be tied into the monitoring port or a sump; however, there shall be permanent automatic pump installed.

c. Determination of groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a licensed PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either formed or unformed manure storage structures:

1. Temporary monitoring wells. A minimum of three temporary monitoring wells shall be installed. The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the bottom of the liner of an unformed manure storage structure or to at least two feet below the footings of a formed manure storage structure.

- Unformed manure storage structures. For an unformed manure storage structure, each monitoring well may be installed in the existing core holes resulting from the corings required in subrule 65.108(5).

- Formed manure storage structures. For a formed manure storage structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed manure storage structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

2. Test pits. The department may allow use of test pits in lieu of temporary monitoring wells if seasonal variation in climatic patterns, soil and geologic conditions prevent accurate determination of the seasonal high-water table or prior to the construction of an unformed manure storage structure liner to ensure that the required separation distance to the groundwater table is being met. The bottom of each test pit shall be at least two feet below the floor of the manure storage structure or egg washwater storage structure. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS-qualified staff person for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. One test pit shall be located in each corner and one in the center of the proposed manure control structure, unless otherwise specified by the department. Test pits shall be backfilled and compacted to achieve the seepage loss as outlined in subrule 65.108(7). A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Construction specifications; and
- Weather conditions both prior to and during the period in which test pits are open.

(2) The seasonal high-water table shall be determined by measuring the groundwater level in the temporary monitoring wells not earlier than seven days following installation and shall include consideration of NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.108(6)“b,” the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

65.108(7) Seals for unformed manure storage structures and unformed egg washwater storage structures. An unformed manure storage structure or egg washwater storage structure shall be sealed such that seepage loss through the seal shall not exceed 1/16 inch per day at the design depth of the structure. Following construction of the structure, the results of a testing program that indicates the adequacy of the seal shall be provided to that department in writing prior to start-up of a permitted operation.

65.108(8) Unformed manure storage structure and unformed egg washwater storage structure liner design and construction standards. An unformed manure storage structure or unformed egg washwater storage structure that receives a construction permit after January 21, 1998, shall comply with the following minimum standards in addition to subrule 65.108(7).

a. If the location of the proposed unformed manure storage structure or unformed egg washwater storage

structure contains suitable materials as determined by the soil corings taken pursuant to subrule 65.108(5), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of six inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of six inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed unformed manure storage structure or unformed egg washwater storage structure does not contain suitable materials as determined by the soil corings taken pursuant to subrule 65.108(5), suitable materials shall be obtained from another location approved by the department and shall be compacted to establish a minimum of a 24-inch liner.

c. Where sand seams, gravel seams, organic soils or other materials that are not suitable are encountered during excavation, the area where they are discovered shall be overexcavated a minimum of 24 inches and replaced with suitable materials and compacted.

d. All loose lift material must be placed in lifts of nine inches or less and compacted. The material shall be compacted at or above optimum moisture content and meet a minimum of 95 percent of the maximum density as determined by the Standard Proctor test after compaction.

e. For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for unformed manure storage structure or unformed egg washwater storage structure construction are not considered suitable liner materials.

f. As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned for an unformed manure storage structure or unformed egg washwater storage structure, the permit application shall outline how the site will be prepared for placement of the liner, the physical, chemical, and other pertinent properties of the proposed liner, and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications that involve use of synthetic liners, the department will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

g. For berm erosion control, the following requirements apply to unformed manure storage structures and unformed egg washwater storage structures constructed after May 12, 1999:

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the structure.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the structure where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the structure.

(4) To control erosion, perennial (grass) vegetation must be maintained on the outer, top and inner dikes up to the two-foot freeboard level of the unformed storage structure or earthen egg washwater storage structure, unless covered by concrete, riprap, synthetic liners or similar erosion control materials or measures.

(5) The owner of a confinement feeding operation with an unformed manure storage structure or an unformed egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found that may impact either structural stability or liner integrity shall be corrected in a timely manner.

h. After May 29, 1997, a person shall not construct a new or expand an existing unformed manure storage structure or an unformed egg washwater storage structure within an agricultural drainage well area.

i. The top width of any dike shall be a minimum of ten feet wide. The interior and exterior dike slopes shall not be steeper than three feet horizontal to one foot vertical.

65.108(9) Anaerobic lagoon design standards. An anaerobic lagoon shall meet the requirements of this subrule.

a. General.

(1) Depth. Liquid depth shall be at least 8 feet, but 15 to 20 feet is preferred if soil and other site conditions allow.

(2) Inlet. One subsurface inlet at the center of the lagoon or dual (subsurface and surface) inlets are

preferred to increase dispersion. If a center inlet is not provided, the inlet structure shall be located at the center of the longest side of the anaerobic lagoon.

(3) Shape. Long, narrow anaerobic lagoon shapes decrease manure dispersion and should be avoided. Anaerobic lagoons with a length-to-width ratio of greater than 3:1 shall not be allowed.

(4) Aeration. Aeration shall be treatment as an “add-on process” and shall not eliminate the need for compliance with all anaerobic lagoon criteria contained in these rules.

(5) Manure loading frequency. The anaerobic lagoon shall be loaded with manure and dilution water at least once per week.

(6) Design procedure. Total anaerobic lagoon volume shall be determined by summation of minimum stabilization volume; minimum dilution volume (not less than 50 percent of minimum stabilization volume); manure storage between periods of disposal; and storage for eight inches of precipitation.

(7) Manure storage period. Annual or more frequent manure removal from the anaerobic lagoon, preferably prior to May 1 or after September 15 of the given year, shall be practiced to minimize odor production. Design manure storage volume between disposal periods shall not exceed the volume required to store 14 months’ manure production. Manure storage volume shall be calculated based on the manure production values found in Table 5 located at iowadnr.gov/afo/rules.

b. Minimum stabilization volume and loading rate.

(1) For all animal species other than beef cattle, there shall be 1,000 cubic feet minimum design volume for each 5 pounds of volatile solids produced per day if the volatile solids produced per day are 6,000 pounds or fewer and for each 4 pounds if the volatile solids produced per day are more than 6,000 pounds. For beef cattle, there shall be 1,000 cubic feet minimum design volume for each 10 pounds of volatile solids produced per day.

(2) In Lyon, Sioux, Plymouth, Woodbury, Osceola, Dickinson, Emmet, Kossuth, O’Brien, Clay, Palo Alto, Cherokee, Buena Vista, Pocahontas, Humboldt, Ida, Sac, Calhoun, and Webster Counties for all animal species other than beef there shall be 1,000 cubic feet minimum design volume for each 4.5 pounds of volatile solids per day if the volatile solids produced per day are 6,000 pounds or fewer. However, if a water analysis as required in subparagraph 65.108(9)“c”(2) below indicates that the sulfate level is below 500 milligrams per liter, then the rate is 1,000 cubic feet for each 5.0 pounds of volatile solids per day.

(3) Credit shall be given for removal of volatile solids from the manure stream prior to discharge to the lagoon. The credit shall be in the form of an adjustment to the volatile solids produced per day. The adjustments shall be at the rate of 0.5 pound for each pound of volatile solids removed. For example, if a swine facility produces 7,000 pounds of volatile solids per day, and if 2,000 pounds of volatile solids per day are removed, the volatile solids produced per day would be reduced by 1,000 pounds, leaving an adjusted pounds of volatile solids produced per day of 6,000 pounds (for which the loading rate would be 5 pounds according to subparagraph 65.108(9)“b”(1) above).

(4) Credit shall be given for mechanical aeration if the upper one-third of the lagoon volume is mixed by the aeration equipment and if at least 50 percent of the oxygen requirement of the manure is supplied by the aeration equipment. The credit shall be in the form of an increase in the maximum loading rate (which is the equivalent of a decrease in the minimum design volume) in accordance with Table 8 located at iowadnr.gov/afo/rules.

(5) If a credit for solids removal is given in accordance with subparagraph 65.108(9)“b”(3) above, the credit for qualified aeration shall still be given. The applicant shall submit evidence of the five-day biochemical oxygen demand (BOD5) of the manure after the solids removal so that the aeration credit can be calculated based on an adjustment rate of 0.5 pound for each pound of solids removed.

(6) American Society of Agricultural and Biological Engineers standards, “Manure Production and Characteristics,” D384.2, effective March 2005, or Midwest Plan Service-18, Table 2-1, effective January 2004, shall be used in determining the BOD5 production and volatile solid production of various animal species.

c. Water supply.

(1) The source of the dilution water discharged to the anaerobic lagoon shall be identified.

(2) The sulfate concentration of the dilution water to be discharged to the anaerobic lagoon shall be

identified. The sulfate concentration shall be determined by standard methods as defined in rule 567—60.2(455B).

(3) A description of available water supplies shall be provided to prove that adequate water is available for dilution. It is recommended that, if the sulfate concentration exceeds 250 mg/l, then an alternate supply of water for dilution should be sought.

d. Initial lagoon loading. Prior to the discharge of any manure to the anaerobic lagoon, the lagoon shall be filled to a minimum of 50 percent of its minimum stabilization volume with fresh water.

e. Lagoon manure and water management during operation. Following initial loading, the manure and water content of the anaerobic lagoon shall be managed according to either of the following:

(1) For single-cell lagoons or multicell lagoons without a site-specific lagoon operation plan. The total volume of fresh water for dilution added to the lagoon annually shall equal one-half the minimum stabilization volume. At all times, the amount of fresh water added to the lagoon shall equal or exceed the amount of manure discharged to the lagoon.

(2) For a two- or three-cell anaerobic lagoon. The manure and water content of the anaerobic lagoon may be managed in accordance with a site-specific lagoon operation plan approved by the department. The lagoon operation plan must describe in detail the operational procedures and monitoring program to be followed to ensure proper operation of the lagoon. Operational procedures shall include identifying the amounts and frequencies of planned additions of manure, fresh water and recycle water, and amount and frequencies of planned removal of solids and liquids. Monitoring information shall include locations and intervals of sampling, specific tests to be performed, and test parameter values used to indicate proper lagoon operation. As a minimum, annual sampling and testing of the first lagoon cell for electrical conductivity and either chemical oxygen demand (COD) or total ammonia (NH₃ + NH₄) shall be required.

f. Manure removal. If the anaerobic lagoon is to be dewatered once a year, manure should be removed to approximate the annual manure volume generated plus the dilution water used. If the anaerobic lagoon is to be dewatered more frequently, the anaerobic lagoon liquid level should be managed to maintain adequate freeboard.

65.108(10) Concrete standards.

a. A formed manure storage structure that is constructed of concrete on or after March 24, 2004, and that is part of a confinement feeding operation other than a SAFO shall meet the following minimum design and concrete standards and be designed by either of the two methods listed below:

(1) Design of a formed manure storage structure prepared and sealed by a PE or an NRCS engineer shall be in accordance with the American Concrete Institute (ACI) Building Code ACI 318-19, effective May 3, 2019, ACI 360R-10, effective April 2010, or ACI 350-20, effective November 6, 2020; Portland Cement Association (PCA) publication EB075, effective April 19, 2021, or PCA EB001.16, effective September 2016; or Midwest Plan Service (MWPS) publication MWPS-36 2nd Edition, effective 2005, or MWPS TR-9, effective 1999, and shall also meet the following minimum design and concrete standards.

(2) If a formed manure storage structure is not designed by a PE or NRCS engineer, the design and specifications shall be in conformance with MWPS-36 2nd Edition (for a belowground rectangular tank), with MWPS TR-9 (for a circular tank) or in accordance with Appendix C located at iowadnr.gov/afo/rules (for a belowground, laterally braced rectangular tank). A formed manure storage structure with a depth greater than 12 feet shall be designed by a PE or NRCS engineer.

b. Formed manure storage structures used to store liquid manure, dry manure or dry bedded manure shall meet all of the following minimum requirements:

(1) All concrete shall have the following minimum as-placed compressive strengths and shall meet American Society for Testing and Materials (ASTM) standard ASTM C 94-18, effective December 15, 2018:

1. 4,000 pounds per square inch (psi) for walls, floors, beams, columns and pumpouts;
2. 3,000 psi for the footings.

The average concrete strength by testing shall not be below design strength. No single test result shall be more than 500 psi less than the minimum compressive strength.

(2) Cementitious materials shall consist of Portland cement conforming to ASTM C 150, effective July 1, 2022. Aggregates shall conform to ASTM C 33-18, effective March 15, 2018. Blended cements in

conformance with ASTM C 595, effective December 15, 2008, are allowed only for concrete placed between March 15 and October 15. Portland-pozzolan cement or Portland blast furnace slag blended cements shall contain at least 75 percent, by mass, of Portland cement.

(3) All concrete placed for walls shall be consolidated or vibrated, by manual or mechanical means, or a combination, in a manner that meets ACI 309R, effective January 2005.

(4) All steel rebar used shall be a minimum of grade 40 steel. All rebar, with the exception of rebar dowels connecting the walls to the floor or footings, shall be secured and tied in place prior to the placing of concrete.

(5) Waterstops shall be installed in all areas where fresh concrete meets hardened concrete. Waterstops shall be made of plastic, rolled bentonite or similar materials approved by the department. Only embedded waterstops are allowed in vertical joints. Adhesive or self-sticking waterstops shall not be used on vertical joints.

(6) The finished subgrade of a formed manure storage structure shall be graded and compacted to provide a uniform and level base and shall be free of vegetation, manure and debris. For the purpose of this subrule, “uniform” means a finished subgrade with similar soils.

(7) When the groundwater table, as determined in paragraph 65.108(6)“c” is above the bottom of the formed manure storage structure, a drain tile shall be installed along the footings to artificially lower the groundwater table pursuant to paragraph 65.108(6)“b.” The drain tile shall be placed within three feet of the footings as indicated in Appendix C, Figure C-1, located at iowadnr.gov/afo/rules and shall be covered with a minimum of two inches of gravel, granular material, fabric or a combination of these materials to prevent plugging the drain tile.

(8) All floor slabs shall be a minimum of five inches thick and have minimum primary reinforcement using one of the following methods:

1. Grade 40 #4 steel rebar, placed at a maximum of 18 inches on center each way in a single mat. Floor slab reinforcement shall be located in the middle of the thickness of the floor slab.

2. Glass fiber-reinforced polymer (GFRP) rebar, fiber-reinforced polymer (FRP) rebar or composite rebar may be used in floor slabs only and shall conform to ACI 440.11.22, effective September 2, 2022, and Table 3 of ASTM 7957, effective February 1, 2022. Supporting documentation shall be submitted for nonsteel rebar demonstrating the equivalency to #4 steel rebar at 18 inches on center each way. GFRP rebar shall not be manufactured using a polyester-based resin system per ASTM D7957 and shall meet the additional following ASTM D7957 parameters:

- Mean Tensile Modulus of Elasticity.....>6,500,000 psi (44,800 MPa)
- Guaranteed Bond Strength.....>1,100 psi (7.6 MPa)

3. Fiber-reinforced concrete (FRC) may be used in floor slabs only and shall conform to the requirements of ASTM C1116/C1116M Type I (steel FRC) and Type III (synthetic FRC), effective September 1, 2023. FRC shall provide a minimum average equivalent strength ratio (Re3) of 30 percent when tested in accordance with ASTM C1812/1812M, effective December 15, 2022.

4. Fiber mesh shall not be substituted for primary reinforcement.

5. Nondestructive methods to verify the floor slab thickness may be required by the department. The results shall indicate that at least 95 percent of the floor slab area meets the minimum required thickness. In no case shall the floor slab thickness be less than four and one-half inches.

(9) The footing or the area where the floor comes in contact with the walls and columns shall have a thickness equal to the wall thickness, but in no case be less than eight inches, and the width shall be at least twice the thickness of the footing. All exterior walls shall have footings below the frostline. Tolerances shall not exceed negative one-half inch of the minimum footing dimensions.

(10) The vertical steel of all walls shall be extended into the footing and be bent at 90° or a separate dowel shall be installed as a #4 rebar that is bent at 90° with at least 20 inches of rebar in the wall and extended into the footing within 3 inches of the bottom of the footing and extended at least 3 inches horizontally, as indicated in Appendix C, Figure C-1, located at iowadnr.gov/afo/rules. As an alternative to the 90° bend, the dowel may be extended at least 12 inches into the footing, with a minimum concrete cover of 3 inches at the bottom. Dowel spacing (bend or extended) shall be the same as the spacing for the vertical rebar. In lieu of dowels, mechanical means or alternate methods may be used as anchorage of interior walls to footings.

(11) All footings, slabs, and walls shall be formed with rigid forming systems and shall not be earth-formed. Form ties shall be nonremovable to provide a liquid-tight structure. No conduits or pipes shall be installed through an outside wall below the maximum liquid level of the structure.

(12) All wall reinforcement shall be placed so as to have a rebar cover of two inches from the inside face of the wall for a belowground manure storage structure. Vertical wall reinforcement should be placed closest to the inside face. Rebar placement shall not exceed tolerances specified in ACI 318-19.

(13) All construction joints in exterior walls shall be constructed to prevent discontinuity of steel and have properly spliced rebar placed through the joint.

(14) All concrete shall be cured for at least seven days after placing, in a manner which meets ACI 308R-16, effective May 2016, by maintaining adequate moisture or preventing evaporation. Proper curing shall be done by ponding, spraying or fogging water; by using a curing compound that meets ASTM C 309, effective August 22, 2019; or by using wet burlap, plastic sheets or similar materials.

(15) Backfilling of the walls shall not start until the floor slats or permanent bracing has been installed and grouted. Backfilling shall be performed with material free of vegetation, large rocks or debris.

(16) If air temperature is below 40 degrees Fahrenheit, the ACI Standard 306R-16, "Recommended Practice for Cold Weather Concreting," effective September 2016, should be followed. If ready-mix concrete temperature is above 90 degrees Fahrenheit, the ACI Standard 305R-20, "Recommended Practice for Hot Weather Concreting," effective date September 2020, should be followed.

c. Formed manure storage structures constructed of steel or pre-cast concrete shall be designed by a PE and certified by the PE and the manufacturer's representative that the structure was built in accordance with the manufacturer's requirements.

65.108(11) *Secondary containment barriers for manure storage structures.* Secondary containment barriers used to qualify any confinement feeding operation for the exemption provision in subrule 65.107(7) shall be filed with the department according to subrule 65.104(5) and shall meet the following design standards:

a. A secondary containment barrier shall consist of a structure surrounding or downslope of a manure storage structure and shall be designed according to either of the following:

(1) If the manure storage structure is used to store liquid or semiliquid manure, the secondary containment barrier shall be designed to contain 120 percent of the volume of manure stored above the manure storage structure's final grade or 50 percent of the volume of manure stored belowground or partially belowground, whichever is greater. Engineering drawings prepared by a PE licensed in Iowa or an NRCS-qualified staff person must be submitted according to procedures set forth in subrule 65.104(5) and must show compliance with subrule 65.108(11). If the containment barrier does not surround the manure storage structure, upland drainage must be diverted. For purposes of this subrule only, semiliquid manure means manure that contains a percentage of dry matter that results in manure too solid for pumping but too liquid for stacking.

(2) If the manure storage structure is used for the storage of only dry manure or dry bedded manure, the secondary containment barrier shall be designed to contain at least 10 percent of the volume of manure stored. Detailed drawings prepared by the owner or a representative must be submitted according to procedures set forth in subrule 65.104(5) and must show compliance with subrule 65.108(1). If the containment barrier does not surround the manure storage structure, upland drainage must be diverted. Any dry manure retained by the secondary containment barrier shall be removed and properly disposed of within 14 days.

b. The barrier may be constructed of earth, concrete, or a combination of both. If a relief outlet or valve is installed, the relief outlet or valve shall remain closed. Any accumulated liquid due to an overflow shall be land-applied as stated in the operation's MMP.

c. The base shall slope to a collecting area where storm water can be pumped out. If storm water is contaminated with manure, it shall be land-applied at normal fertilizer application rates in compliance with rule 567—65.101(455B,459,459B).

d. Secondary containment barriers constructed entirely or partially of earth shall comply with the following requirements:

(1) The soil surface, including dike, shall be constructed to prevent downward water movement at rates greater than 1×10^{-6} cm/sec and shall be maintained to prevent downward water movement at rates greater

than 1×10^{-5} cm/sec.

(2) Dikes shall not be steeper than 45 degrees and shall be protected against erosion. If the slope is 19 degrees or less, grass can be sufficient protection, provided it does not interfere with the required soil seal.

(3) The top width of the dike shall be no less than three feet.

e. Secondary containment barriers constructed of concrete shall be watertight and comply with the following requirements:

(1) The base of the containment structure shall be designed to support the manure storage structure and its contents.

(2) The concrete shall be routinely inspected for cracks, which shall be repaired with a suitable sealant.

f. Nothing shall be stored within a secondary containment barrier, including but not limited to machinery or feedstock.

65.108(12) Human sanitary waste. Human sanitary waste shall not be discharged to a manure storage structure or egg washwater storage structure.

65.108(13) Requirements for qualified operations. A confinement feeding operation that meets the definition of a qualified operation shall only use an aerobic structure for manure storage and treatment. This requirement does not apply to the following types of confinement feeding operations: (1) one that only handles dry manure; (2) an egg washwater storage structure; (3) a confinement feeding operation that was constructed before May 31, 1995, and does not expand; or (4) a confinement feeding operation that processes manure using an anaerobic digester system.

65.108(14) Aboveground formed manure storage structures with external outlet or inlet below the liquid level. A formed manure storage structure that is constructed to allow the storage of manure wholly or partially above ground and that has an external outlet or inlet below the liquid level shall have all of the following:

a. Two or more shutoff valves on any external outlet or inlet below the liquid level. At least one shutoff valve shall be located inside the structure and be operable if the external valve becomes inoperable or broken off. Alternative options may be considered by the department.

b. All external outlets or inlets below the liquid level shall be barricaded, encased in concrete, or otherwise protected to minimize accidental destruction.

c. Construction shall comply with the manufacturer's requirements.

d. An emergency response plan for retaining manure at the site and cleanup if the manure storage structure fails or there is any other type of accidental discharge. The plan shall consist of telephone numbers to comply with subrule 65.2(1) and a list of contractors, equipment, equipment technical support, and alternative manure storage or land application sites that can be used during inclement weather.

567—65.109(455B,459,459B) Construction certification. A confinement feeding operation that obtains a construction permit after March 20, 1996, shall submit to the department a construction certification according to the following:

65.109(1) For a confinement feeding operation that is below the threshold requirements for an engineer prior to using a permitted confinement feeding operation structure, the person responsible for constructing a formed manure storage structure or the permittee shall submit to the department a construction certification, as specified in the construction permit.

65.109(2) For a confinement feeding operation that uses an unformed manure storage structure or an egg washwater storage structure, or an operation that meets or exceeds the threshold requirements for an engineer, a certification from a licensed PE that the confinement feeding operation structure was:

a. Constructed in accordance with the design plan. Any changes to the approved plans must first be authorized by the department and must include a certification that the proposed changes are consistent with the standards of these rules or statute;

b. Supervised by the licensed PE or a designee of the PE during critical points of the construction. A designee shall not be the permittee, the owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

c. Inspected by the licensed PE after completion of construction and before commencement of operation; and

d. Constructed in accordance with the drainage tile removal standards of subrule 65.108(1) and including

a report of the findings and actions taken to comply with subrule 65.108(1).

567—65.110(455B,459,459B) Manure management plan (MMP) requirements.

65.110(1) In accordance with Iowa Code section 459.312, the following persons are required to submit MMPs to the department, including an original MMP and an updated MMP, as required by this rule:

a. An applicant for a construction permit for a confinement feeding operation. However, an MMP shall not be required of an applicant for an egg washwater storage structure or for a SAFO.

b. The owner of a confinement feeding operation, other than a SAFO, if one of the following applies:

(1) The confinement feeding operation was constructed or expanded after May 31, 1985, regardless of whether the confinement feeding operation structure was required to have a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to Iowa Code section 459.303 or whether the person has submitted a prior MMP. If the new manure storage structure does not result in an increase in manure volume for the confinement feeding operation and there is no change in animal category for determining animal units, then a new MMP is not required to be submitted.

c. A person who applies manure in Iowa that was produced in a confinement feeding operation, other than a small operation, located outside of Iowa.

d. A new owner of a confinement feeding operation may apply manure under the most recent owner's MMP until the new owner develops and submits an original MMP. The new owner must develop and submit an original MMP within 60 days after acquiring the operation.

e. Exceptions.

(1) A research college is exempt from this subrule and the MMP requirements of rule 567—65.111(455B,459,459B) for research activities and experiments performed under the authority of the research college and related to confinement feeding operations.

(2) An AFO otherwise required to submit an updated MMP and pay an annual compliance fee may make an election to be considered a SAFO for purposes of filing updated MMPs and annual compliance fees if the confinement feeding operation maintains an animal unit capacity of 500 or fewer animal units. The election shall automatically terminate when more than 500 animal units are housed at the confinement feeding operation at any one time. If the confinement feeding operation exceeds more than 500 animal units, an MMP shall be submitted.

65.110(2) The owner of a proposed confinement feeding operation who is not required to obtain a construction permit pursuant to subrule 65.103(1) but who is required to file an MMP pursuant to paragraph 65.110(1)“*b*” shall file a construction design statement and provide the information required in subrule 65.104(2), including the confinement feeding operation's MMP, to the department at least 30 days before the construction of an AFO structure begins, as defined in subrules 65.6(1) and 65.6(2).

65.110(3) Scope of MMP; updated plans; annual compliance fee.

a. Each confinement feeding operation required to submit an MMP shall be covered by a separate MMP.

b. The owner of a confinement feeding operation who is required to submit an MMP under this rule shall submit an updated MMP on an annual basis to the department. The updated MMP may be submitted by hard copy or by electronic submittal. The updated plan must reflect all amendments made during the period of time since the previous MMP submission.

(1) If the plan is submitted by hard copy, the submittal process shall be as follows: The owner of the AFO shall also submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. If the owner of the AFO has not previously submitted an MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied, the owner must submit a complete MMP to each required county. The county auditor or other county official or employee designated by the county board of supervisors may accept the updated plan on behalf of the board. The updated plan shall include documentation that the county board of supervisors or other designated county official or employee received the MMP update.

(2) If the plan is submitted electronically, the submittal process shall be as follows: The owner of the AFO shall submit the updated MMP to the department through the department's electronic web application. Once

the submittal has been completed, the department shall provide electronic access of the updated MMP to the board of supervisors of each county where the confinement feeding operation is located and each county where manure is land-applied.

(3) The department will stagger the dates by which the updated MMPs are due and will notify each confinement feeding operation owner of the date on which the updated MMP is due. To satisfy the requirements of an updated MMP, an owner of a confinement feeding operation must submit one of the following:

1. A complete MMP;
2. A department-approved document stating that the MMP submitted in the prior year has not changed;

or

3. A department-approved document listing all the changes made since the previous MMP was submitted and approved.

c. An annual compliance fee of \$0.15 per animal unit at the AFO shall accompany an annual MMP update submitted to the department for approval. The annual compliance fee is based on the animal unit capacity of the confinement feeding operation stated in the updated annual MMP submission. If the person submitting the MMP is a contract producer, as provided in Iowa Code chapter 202, the active contractor shall pay the annual compliance fee.

65.110(4) The department shall review and approve or disapprove all complete MMPs within 60 days of the date they are received.

65.110(5) Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation required to submit an MMP until the department has approved the plan. Manure shall be applied in compliance with rule 567—65.100(455B,459,459B).

65.110(6) Manure storage indemnity fee. All persons required to submit an MMP to the department shall also pay to the department an indemnity fee as required in Iowa Code section 459.503 except those operations constructed prior to May 31, 1995, which were not required to obtain a construction permit.

65.110(7) Filing fee. Any person submitting an original MMP must also pay to the department an MMP filing fee of \$250. This fee shall be included with each original MMP being submitted. If the confinement feeding operation is required to obtain a construction permit and to submit an original MMP as part of the construction permit requirements, the applicant must pay the MMP filing fee together with the construction permit application fee, which total \$500.

567—65.111(455B,459,459B) MMP content requirements. All MMPs are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 and as described below.

65.111(1) General.

a. A confinement feeding operation that is required to submit an MMP to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including but not limited to Iowa State University, the United States Department of Agriculture (USDA), a licensed PE, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils program, the Certified Crop Advisors program, or the Registry of Environmental and Agricultural Professionals program.

b. MMPs shall include all of the following:

- (1) The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

- (2) The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

- (3) The location of the confinement feeding operation identified by county, township, section, $\frac{1}{4}$ section and, if available, the 911 address.

- (4) The animal unit capacity of the confinement feeding operation and, if applicable, the animal weight

capacity.

c. A person who submits an MMP shall include a phosphorus index as part of the MMP as required in subrule 65.111(12).

d. A new owner of a confinement feeding operation may apply manure under the most recent owner's MMP until the new owner develops and submits an original MMP. The new owner must develop and submit an original MMP within 60 days after acquiring the confinement feeding operation.

e. A research college is exempt from this subrule for research activities and experiments performed under the authority of the research college and related to confinement feeding operations.

65.111(2) MMP contents. Confinement feeding operations that will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

a. The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number.

b. The name of the contact person for the confinement feeding operation, including mailing address and telephone number.

c. The location of the confinement feeding operation identified by county, township, section, $\frac{1}{4}$ section and, if available, the 911 address.

d. An estimate of the nitrogen and phosphorus concentration of the manure and estimate of annual manure production.

e. Application rate calculations based on regulations in subrule 65.111(12).

f. The location of manure application.

g. Soil loss calculations using methods specified for Iowa phosphorus index.

h. A phosphorus index of each field in the MMP, as defined in paragraph 65.111(12)"a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

65.111(3) Estimate of manure concentration and production. An MMP must include an estimate of nitrogen and phosphorus concentration and an estimate of annual manure production by one of the following methods.

a. Table values in Table 4 located at iowadnr.gov/afo/rules or other credible sources.

b. Actual concentration and production values from the operation or a similar operation. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University Extension and Outreach publication AE 3550, "How to Sample Manure for Nutrient Analysis." The department may require documentation of the manure sampling protocol or take a split sample to verify the nutrient content of the operation's manure. If actual nitrogen and phosphorus are used for concentration in the MMP, actual manure production must also be used. Any sample used to estimate the concentration of manure must be less than four years old.

65.111(4) Optimum crop yield and crop schedule.

a. To determine the optimum crop yield, the applicant may either exclude the lowest crop yield for the period of the crop schedule in the determination or allow for a crop yield increase of 10 percent. In using these methods, adjustment to update yield averages to current yield levels may be made if it can be shown that the available yield data is not representative of current yields. The optimum crop yield shall be determined using any of the following methods for the cropland where the manure is to be applied:

(1) Soil survey interpretation record. The plan shall include a map showing soil map units for the fields where manure will be applied. The optimum crop yield for each field shall be determined by using the weighted average of the soil interpretation record yields for the soils on the cropland where the manure is to be applied. Soil interpretation records from NRCS shall be used to determine yields based on soil map units.

(2) USDA county crop yields. The plan shall use the county yield data from the USDA Iowa Agricultural Statistics Service.

(3) Proven yield methods. Proven yield methods may only be used if a minimum of the most recent three years of yield data for the crop is used. These yields can be proven on a field-by-field or farm-by-farm basis. To be considered a farm-by-farm basis, the fields must be owned, rented or leased for crop production by the person required to keep records pursuant to subrule 65.111(8) or included in a manure application agreement in

that person's MMP. Crop disaster years may be excluded when there is a 30 percent or more reduction in yield for a particular field or farm from the average yield over the most recent five years. Excluded years shall be replaced by the most recent nondisaster years. Proven yield data used to determine application rates shall be maintained with the current MMP. Any of the following proven yield methods may be used:

1. Proven yields for USDA Farm Service Agency. The plan shall use proven yield data or verified yield data for Farm Service Agency programs.
2. Proven yields for multiperil crop insurance. Yields established for the purpose of purchasing multiperil crop insurance shall be used as proven yield data.
3. Proven yields from other methods. The plan shall use the proven yield data and indicate the method used in determining the proven yield.

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances. However, the penalty preclusion in the previous sentence does not apply to a confinement feeding operation owner subject to the NPDES permit program.

65.111(5) *Location of manure application.*

a. The MMP shall identify each field where the manure will be applied, the number of acres that will be available for the application of manure from the confinement feeding operation, and the basis under which the land is available.

b. A copy of each written agreement executed with the owner of the land where manure will be applied shall be maintained with the current MMP. The written agreement shall indicate the number of acres on which manure from the confinement feeding operation may be applied and the length of the agreement. A written agreement is not required if the land is owned or rented for crop production by the owner of the confinement feeding operation. Owners of dry bedded confinement feeding operations required to have an MMP may execute a written agreement with the landowner or the person renting the land for crop production where the dry bedded manure will be applied.

65.111(6) *Soil loss calculations for phosphorus index.* The MMP shall indicate for each field in the plan the crop rotation, tillage practices and supporting practices used to calculate sheet and rill erosion for the phosphorus index. A copy of an NRCS RUSLE2 erosion calculation record shall satisfy this requirement. The plan shall also identify the highly erodible cropland where manure will be applied.

65.111(7) *Current MMP.* The owner of a confinement feeding operation who is required to submit an MMP shall maintain a current MMP at the site of the confinement feeding operation or at a residence or office of the owner or operator of the operation within 30 miles of the site. The MMP may be an electronic or hard copy. The MMP should include completed manure sales forms if the manure is sold. If manure management practices change, a person required to submit an MMP shall make appropriate changes consistent with this chapter. If values other than the standard table values are used for MMP calculations, the source of the values used shall be identified.

65.111(8) *Recordkeeping.* Records shall be maintained by the owner of a confinement feeding operation who is required to submit an MMP. Records shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the confinement feeding operation or at a residence or office of the owner or operator of the facility within 30 miles of the site. Electronic records are acceptable in lieu of paper records at the facility or the office. Records to demonstrate compliance with the MMP shall include the following:

- a.* Factors used to calculate the manure application rate:
 - (1) Optimum yield for the planned crop.
 - (2) Types of nitrogen credits and amounts.
 - (3) Remaining crop nitrogen needed.

(4) Nitrogen and phosphorus concentration and first-year nitrogen availability of the manure. If an actual sample is used, documentation shall be provided.

b. If phosphorus-based application rates are used, the following shall be included:

(1) Crop rotation.

(2) Phosphorus removed by crop harvest of that crop rotation.

c. Maximum allowable manure application rate.

d. Actual manure application information:

(1) Methods of application when manure from the confinement feeding operation was applied.

(2) Date(s) when the manure from the confinement feeding operation was applied.

(3) Location of the field where the manure from the confinement feeding operation was applied, including the number of acres.

(4) The manure application rate.

e. The date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure. However, if the date and application rate information is for fields that are not owned for crop production or that are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with an MMP or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.111(1) “*a.*” If manure is applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the manure.

f. A copy of the current soil test lab results for each field in the MMP.

g. For sales of manure under paragraph 65.111(15) “*b.*,” recordkeeping requirements of subparagraph 65.111(15) “*b*”(7) shall be followed.

h. The name and certification number of the certified manure applicator.

65.111(9) Record inspection. The department may inspect a confinement feeding operation at any time during normal working hours and may inspect the MMP and any records required to be maintained. As required in Iowa Code section 459.312(12), Iowa Code chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the owner of the confinement feeding operation.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

65.111(10) Enforcement action. An owner required to provide the department an MMP pursuant to this rule who fails to provide the department an MMP or who is found in violation of the terms and conditions of the MMP shall not be subject to an enforcement action other than assessment of a civil penalty pursuant to Iowa Code section 455B.191.

65.111(11) Soil sampling requirements for fields where the phosphorus index must be used. Soil samples shall be obtained from each field in the MMP, and the soil samples shall be four years old or less. Each soil sample shall be analyzed for phosphorus and pH. The soil sampling protocol shall meet all of the following requirements:

a. Acceptable soil sampling strategies include but are not limited to grid sampling, management zone sampling, and soil type sampling. Procedural details can be taken from Iowa State University Extension and Outreach publication CROP 31-8, “Take a Good Soil Sample to Help Make Good Fertilization Decisions,” NCR-13 Report 348, “Soil Sampling for Variable-Rate Fertilizer and Lime Application,” effective January 1, 2001, or other credible soil sampling publications.

b. Each soil sample must be a composite of at least ten soil cores from the sampling area, with each core containing soil from the top six inches of the soil profile.

c. Each soil sample shall represent no more than ten acres. For fields less than or equal to 15 acres, only one soil sample is necessary.

d. Soil analysis must be performed by a lab enrolled in the Iowa department of agriculture and land stewardship (IDALS) soil testing certification program.

e. The soil phosphorus test method must be an appropriate method for use with the phosphorus index. If soil pH is greater than or equal to 7.4, soil phosphorus data from the Bray-1 extraction method is not acceptable for use with the phosphorus index.

f. If manure is applied as phosphorus-based rates within soil sampling periods, each soil sample may represent up to 20 acres for the next required soil sampling.

65.111(12) Use of the phosphorus index. Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index.

a. When sheet and rill erosion is calculated for the phosphorus index, the soil map unit used for the calculation shall be the predominant soil map unit of the steepest slope class that comprises at least ten percent of the total field area. For fields less than 25 acres in size, the predominant soil map unit of the steepest slope class that comprises at least twenty percent of the total field area shall be used. In all MMPs submitted to the department for approval, the soil map unit used for the sheet and rill erosion calculation will be consistent with NRCS Iowa Agronomy Technical Note No. 29: Dominant Critical Area. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index with in-field measurement or estimates from review of at least four aerial photographs shall be used. If using aerial photographs for the evaluation, aerial photography from the spring prior to crop canopy or fall after harvest must be included in the evaluation when available.

b. When sheet and rill erosion is calculated for the phosphorus index, the soil map unit used for the calculation shall be the predominant highly erodible soil map unit when planning for a highly erodible field and the predominant non-highly erodible soil map unit when planning for a non-highly erodible field. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index shall be used with: (1) supporting documents and spreadsheets or (2) aerial photographs from at least four separate years, with at least one of the photographs being from the most vulnerable time of the year.

c. The average (arithmetic mean) soil phosphorus concentration of a field shall be used in the phosphorus index.

d. Soil phosphorus concentration data is considered valid for use in the phosphorus index if the data is four years old or less and meets the requirements of subrule 65.111(11).

e. For an original MMP, previous soil sampling data that does not meet the requirements of subrule 65.111(11) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.111(11), the fields must be soil-sampled according to the requirements of subrule 65.111(11) no more than one year after the original MMP is approved and an updated original MMP shall be submitted with the results of the new samples at the time of the next MMP update.

f. The following are the manure application rate requirements for fields that are assigned the phosphorus index site vulnerability ratings below as determined by the NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index to the NRCS 590 standard rounded to the nearest one-hundredth:

(1) Very Low or Low (0-2). Manure shall not be applied in excess of a nitrogen-based rate in accordance with subrule 65.111(13).

(2) Medium (>2-5). Manure shall not be applied (1) in excess of two times the phosphorus removed with crop harvest over the period of the crop rotation or (2) to exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(3) High or Very High (>5). Manure shall not be applied on a field with a rating greater than 5.

g. Additional commercial fertilizer may be applied as follows on fields receiving manure:

(1) Phosphorus fertilizer may be applied in addition to phosphorus provided by the manure up to amounts recommended by soil tests and Iowa State University Extension and Outreach publication PM 1688, "A General Guide for Crop Nutrient and Limestone Recommendations in Iowa."

(2) Nitrogen fertilizer may be applied in addition to nitrogen provided by the manure to meet the remaining nitrogen need of the crop as calculated in the current MMP. Additional nitrogen fertilizer may be applied up to the amounts indicated by soil test nitrogen results or crop nitrogen test results as necessary to obtain the optimum crop yield.

h. Updating the phosphorus index.

(1) When any inputs to the phosphorus index change, an operation shall recalculate the phosphorus index and adjust the application rates if necessary.

(2) If additional land becomes available for manure application, the phosphorus index shall be calculated to determine the manure application rate before manure is applied.

(3) An operation must submit a complete MMP using a new phosphorus index, including soil sampling as required in subrule 65.111(11), for each field in the MMP a minimum of once every four years.

65.111(13) *Requirements for application of a nitrogen-based manure rate to a field.*

a. Nitrogen-based application rates shall be based on the total nitrogen content of the manure unless the calculations are submitted to show that nitrogen crop usage rates based on plant-available nitrogen have not been exceeded for the crop schedule submitted.

b. The correction factor for nitrogen losses shall be determined for the method of application by the following or from other credible sources for nitrogen volatilization correction factors.

Knifed in or soil injection of liquids	0.98
Surface-apply liquid or dry with incorporation within 24 hours	0.95
Surface-apply liquid or dry with incorporation after 24 hours	0.80
Surface-apply liquids with no incorporation	0.75
Surface-apply dry with no incorporation	0.70
Irrigated liquids with no incorporation	0.60

c. Nitrogen-based applications rates shall be based on the optimum crop yields as determined in subrule 65.111(4) and crop nitrogen usage rate factor values in Table 4 located at iowadnr.gov/afo/rules or other credible sources. The calculations of manure applied from the facility must account for fertilizer from all other manure and nonmanure sources. Liquid manure applied to land that is currently planted to soybeans or to land where the current crop has been harvested and that will be planted to soybeans the next crop season shall not exceed 100 pounds of available nitrogen per acre. Further, the 100-pounds-per-acre application limitation in the previous sentence does not apply on or after June 1 of each year; in that event, subrule 65.111(4) and Table 4 would apply as provided in the first sentence of this paragraph.

d. A nitrogen-based manure rate shall account for legume production in the year prior to growing corn or other grass crops and shall account for any planned commercial fertilizer application.

65.111(14) *Requirements for application of a phosphorus-based manure rate to a field.*

a. Phosphorus removal by harvest for each crop in the crop schedule shall be determined using the optimum crop yield as determined in subrule 65.111(4) and phosphorus removal rates of the harvested crop from Table 4a located at iowadnr.gov/afo/rules or other credible sources. Phosphorus crop removal shall be determined by multiplying optimum crop yield by the phosphorus removal rate of the harvested crop.

b. Phosphorus removal by the crop schedule shall be determined by summing the phosphorus crop removal values determined in paragraph 65.111(14)“*a*” for each crop in the crop schedule.

c. The phosphorus applied over the duration of the crop schedule shall be less than or equal to the phosphorus removed with harvest during that crop schedule as calculated in paragraph 65.111(14)“*b*” unless additional phosphorus is recommended by soil tests and Iowa State University Extension and Outreach publication PM 1688, “A General Guide for Crop Nutrient and Limestone Recommendations in Iowa.”

d. Additional requirements for phosphorus-based rates.

(1) No single manure application shall exceed the nitrogen-based rate of the planned crop receiving the particular manure application.

(2) No single manure application shall exceed the rate that applies to the expected amount of phosphorus removed with harvest by the next four anticipated crops in the crop schedule.

e. If the actual crop schedule differs from the planned crop schedule, then any surplus or deficit of phosphorus shall be accounted for in the subsequent manure application.

f. Phosphorus in manure should be considered 100 percent available unless soil phosphorus concentrations are below optimum levels for crop production. If soil phosphorus concentrations are below optimum levels for crop production phosphorus availability, values suggested in Iowa State University Extension and Outreach publication PMR 1003, “Using Manure Nutrients for Crop Production” or other credible sources shall be used.

65.111(15) MMPs for sales of manure. Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or bulk dry manure animal nutrient product regulated by IDALS under Iowa Code chapter 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved MMP form for sales of dry manure. Operations completely covered by this paragraph are not required to meet other MMP requirements in this rule.

b. A confinement feeding operation not fully covered by paragraph 65.111(15) “*a*” that has an established practice of selling manure, or a confinement feeding operation that contains an animal species for which selling manure is a common practice, shall submit an MMP that includes the following:

(1) An estimate of the number of acres required for manure application calculated by one of the following methods:

1. Dividing the total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation by the corn crop removal of phosphorus. The corn crop removal of phosphorus may be estimated by using the phosphorus removal rate in Table 4a located at iowadnr.gov/afo/rules and an estimate of the optimum crop yield for the property in the vicinity of the operation.

2. Totaling the quantity of manure that can be applied to each available field based on application rates determined in conjunction with the phosphorus index in accordance with subrule 65.111(12), and ensuring that the total quantity that can be applied is equal to or exceeds the manure annually generated at the operation.

(2) The total nitrogen available to be applied from the confinement feeding operation.

(3) The total phosphorus (as P₂O₅) available to be applied from the confinement feeding operation if the phosphorus index is required in accordance with paragraph 65.111(1) “*c*.”

(4) An estimate of the annual animal production and manure volume or weight produced.

(5) A manure sales form. If manure will be sold, the manure sales form shall include the following information:

1. A place for the name and address of the buyer of the manure.

2. A place for the quantity of manure purchased.

3. The planned crop schedule and optimum crop yields.

4. A place for the manure application methods and the timing of manure application.

5. A place for the location of the field including the number of acres where the manure will be applied.

6. A place for the manure application rate.

7. A place for a phosphorus index of each field receiving manure, as defined in paragraph 65.111(12) “*a*,” including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

(6) Statements of intent if the manure will be sold. The number of acres indicated in the statements of intent shall be sufficient according to the MMP to apply the manure from the confinement feeding operation. The permit holder for an existing confinement feeding operation with a construction permit may submit past records of manure sales instead of statements of intent. The statements of intent shall include the following information:

1. The name and address of the person signing the statement.
2. A statement indicating the intent of the person to purchase the confinement feeding operation's manure.
3. The location of the farm where the manure can be applied including the total number of acres available for manure application.
4. The signature of the person who may purchase the confinement feeding operation's manure.

(7) The owner shall maintain in the owner's records a current MMP and copies of all of the manure sales forms; the sales forms must be completed and signed by each buyer of the manure and the applicant, and the copies must be maintained in the owner's records for three years after each sale. The owner shall maintain in the owner's records copies of all of the manure sales forms for five years after each sale. An owner of a confinement feeding operation shall not be required to maintain current statements of intent as part of the MMP.

567—65.112(455B,459,459B) Manure applicators certification.

65.112(1) Certification. A commercial manure service or a commercial manure service representative shall not transport, handle, store or apply dry or liquid manure to land unless the person is certified. A confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure that originates from a manure storage structure that is part of a SAFO. Certification of a commercial manure service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applying vehicle or equipment must be certified individually except as allowed in subrule 65.112(7).

65.112(2) Fees.

a. Commercial manure service. The fee for a new or renewed certification of a service is \$200. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.

b. Commercial manure service representative. The fee for a new or renewed representative certification is \$75. The manager of a commercial manure service must be certified as a commercial manure service representative but is exempt from paying the \$75 certification fee.

c. Confinement site manure applicator. The fee for a new or renewed certification is \$100. However, the fee is not required if all of the following apply:

- (1) The person indicates that the person is a family member as defined in this chapter by submitting a completed form provided by the department;
- (2) The person is certified as a confinement site manure applicator within one year of the date another family member was certified or whose certification as a confinement site manure applicator was renewed;
- (3) The other family member certified as a confinement site manure applicator has paid the certification fee.

d. Educational fee. Commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

e. Late fee. Renewal applications received after March 1 require that an additional \$12.50 fee be paid before the certification is renewed. An application is considered to be received on the date it is postmarked.

f. Duplicate certificate. The fee for a duplicate certificate is \$15.

65.112(3) Certification requirements. To be certified by the department as a commercial manure service, a commercial manure service representative or a confinement site manure applicator, a person must do all of the following:

- a.* Apply for certification on a form provided by the department.
- b.* Pay the required fees set forth in subrule 65.112(2).
- c.* Pass the examination given by the department or, in lieu of the examination, attend continuing instruction courses as described in subrule 65.112(6).

65.112(4) Certification term, renewal and grace period.

a. Certification term. Certification for a commercial manure service and commercial manure service representative shall be for a period of one year and shall expire on March 1 of each year. Certification for a

confinement site manure applicator shall be for a period of three years and shall expire on December 31 of the third year.

b. Renewal. Application for renewal of a commercial manure service certification or a commercial manure service representative certification must be received by the department no later than March 1 of the year the certification expires. Application for renewal of a confinement site manure applicator certification must be received by the department or postmarked no later than March 1 after the year the certification expires. Application shall be on forms provided by the department and shall include:

(1) Certification renewal and educational fees.

(2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

c. Substitution of employees. If a commercial manure service pays the certification fee for a representative, the service may substitute representatives. The substituted representative must be certified pursuant to subrule 65.112(3). The service shall provide documentation to the department, on forms provided by the department, that the substitution is valid.

d. Grace period. Except as provided in this paragraph, a commercial manure service, a commercial manure service representative or a confinement site manure applicator may not continue to apply manure after expiration of a certificate. A confinement site manure applicator may continue to apply manure until March 1 following the year the certification expires, provided a complete renewal application, as provided in paragraph 65.112(4)“b,” is postmarked or received by the department prior to March 1. Commercial manure services and representatives must submit an application for certification renewal by March 1 of each year.

65.112(5) Examinations.

a. A person wishing to take the examination required to become a certified commercial manure service representative or certified confinement site manure applicator may request an appointment. The applicant must have a photo identification card at the time of taking the examination.

b. If a person fails the examination, the person may retake the examination but not on the same business day.

c. Upon written request by an applicant, the director will consider the presentation of an oral examination on an individual basis when the applicant has failed the written examination at least twice and the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning.

65.112(6) Continuing instruction courses in lieu of examination.

a. To establish or maintain certification, between March 1 and March 1 of the next year, a commercial manure service representative must each year either pass an examination or attend three hours of continuing instructional courses.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every three years or attend two hours of continuing instructional courses each year. A confinement site manure applicator who chooses to attend instructional courses but fails to attend instructional courses each year must pass an examination as provided in subrule 65.112(5) to maintain certification.

65.112(7) Exemption from certification.

a. Certification as a commercial manure service representative is not required of a person who is any of the following:

(1) Actively engaged in farming and who trades work with another such person.

(2) Employed by a person actively engaged in farming not solely as a manure applicator but who applies manure as an incidental part of the person’s general duties.

(3) Engaged in applying manure as an incidental part of a custom farming operation.

(4) Engaged in applying manure as an incidental part of the person’s duties.

(5) Applying, transporting, handling or storing manure within a period of 30 days from the date of initial employment as a commercial manure service representative if the person applying the manure is acting under direct instructions and control of a certified commercial manure service representative who is physically present at the manure application site by being in sight or immediate communication distance of the supervised person where the certified commercial service representative can communicate with the supervised person at all times. If the prospective employee was previously certified for a commercial manure service, the 30-day

exemption does not apply.

(6) Employed by a research college to apply manure from AFOs that are part of the research activities or experiments of the research college.

b. Certification as a confinement site manure applicator is not required of a person who is either of the following:

(1) A part-time employee or family member of a confinement site manure applicator and is acting under direct instruction and control of a certified confinement site manure applicator who is physically present at the manure application site by being in sight or hearing distance of the supervised person where the certified confinement site manure applicator can physically observe and communicate with the supervised person at all times.

(2) Employed by a research college to apply manure from an AFO that is part of the research activities or experiments of the research college.

65.112(8) *Obligations.* Certified commercial manure services have the following obligations:

a. Maintain the following records of manure disposal operations for a period of three years:

(1) A copy of instructions for manure application provided by the owner of the AFO.

(2) Dates that manure was applied or sold.

(3) The manure application rate.

(4) Location of fields where manure was applied.

b. Comply with the provisions of the MMP prepared for the confinement feeding operation and the requirements of rules 567—65.100(455B,459,459B) and 567—65.101(455B,459,459B). If an MMP does not exist, the requirements of rules 567—65.100(455B,459,459B) and 567—65.101(455B,459,459B) must still be met.

c. Any tanks or equipment used for hauling manure shall not be used for hauling hazardous or toxic wastes, as defined in 567—Chapter 131, or other wastes detrimental to land application and shall not be used in a manner that would contaminate a potable water supply or endanger the food chain or public health.

d. Pumps and associated piping on manure handling equipment shall be installed with watertight connections to prevent leakage.

e. Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

f. Direct connection shall not be made between a potable water source and the tank or equipment on the vehicle.

65.112(9) *Discipline of certified applicators.*

a. Disciplinary action may be taken against a certified commercial manure service, a commercial manure service representative or a confinement site manure applicator on any of the following grounds:

(1) Violation of state law or rules applicable to a certified commercial manure service, a commercial manure service representative, or a confinement site manure applicator or the handling or application of manure.

(2) Failure to maintain required records of manure application or other reports required by this rule.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action.

Additional training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The director shall initiate disciplinary action.

(2) Written notice shall be given to an applicator against whom disciplinary action is being considered.

The notice shall state the informal and formal procedures available for determining the matter. The applicator shall be given 20 days to present any relevant facts and indicate the person's position in the matter and to indicate whether informal resolution of the matter may be reached.

(3) An applicator who receives notice shall communicate verbally or in writing or in person with the director, and efforts shall be made to clarify the respective positions of the applicator and director.

(4) Failure to communicate facts and position relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

(5) If agreement as to appropriate disciplinary sanction, if any, can be reached with the applicator and the director, a written stipulation and settlement between the department and the applicator shall be entered. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the applicator, and the reasons for the particular sanctions imposed.

(6) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the director may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to license discipline.

65.112(10) *Revocation of certificates.*

a. Upon revocation of a certificate, application for commercial manure service representative or confinement site applicator certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

b. Upon revocation of a certificate, application for a commercial manure service certification may be allowed after three years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

65.112(11) *Record inspection.* The department may inspect, with reasonable notice, the records maintained by a commercial manure service. If the records are for an operation required to maintain records to demonstrate compliance with an MMP, the confidentiality provisions of subrule 65.111(9) and Iowa Code section 459.312 shall extend to the records maintained by the commercial manure service.

567—65.113(455B,459,459B) Livestock remediation fund. The livestock remediation fund created in Iowa Code section 459.501 will be administered by the department. Moneys in the fund shall be used for the exclusive purpose of administration of the fund and the cleanup of eligible facilities at confinement feeding operation sites.

65.113(1) *Eligible facility site.* The site of a confinement feeding operation that contains one or more AFO structures is an eligible site for reimbursement of cleanup costs if one of the following conditions exists:

a. A county has acquired title to real estate containing the confinement feeding operation following nonpayment of taxes and the site includes a manure storage structure that contains stored manure or site contamination originating from the confinement feeding operation.

b. A county or the department determines that the confinement feeding operation has caused a clear, present and impending danger to the public health or environment.

65.113(2) *Site cleanup.* Site cleanup includes the removal and land application or disposal of manure from an eligible facility site according to manure management procedures approved by the department. Cleanup may include remediation of documented contamination that originates from the confinement feeding operation. Cleanup may also include demolishing and disposing of AFO structures if their existence or further use would contribute to further environmental contamination and their removal is included in a cleanup plan approved by the department. Buildings and equipment must be demolished or disposed of according to rules adopted by the department in 567—Chapter 101 that apply to the disposal of farm buildings or equipment by an individual or business organization.

65.113(3) *Claims against the fund.* Claims for cleanup costs may be made by a county that has acquired real estate containing an eligible facility site pursuant to a tax deed. A county claim shall be signed by the chairperson of the county board of supervisors. Cleanup may be initiated by the department or may be authorized by the department based on a claim by a county.

a. Advance notice of claim. Prior to or after acquiring a tax deed to an eligible facility site, a county shall notify the department in writing of the existence of the facility and the title acquisition. The county shall request in this notice that the department evaluate the site to determine whether the department will order or

initiate cleanup pursuant to its authority under Iowa Code chapter 455B.

b. Emergency cleanup condition. If a county determines that there exists at a confinement feeding operation site a clear, present and impending danger to the public health or environment, the county shall notify the department of the condition. The danger should be documented as to its presence and the necessity to avoid delay due to its increasing threat. If no cleanup action is initiated by the department within 24 hours after being notified of an emergency condition requiring cleanup, the county may provide cleanup and submit a claim against the fund.

65.113(4) Contents of a claim against the fund.

a. A county claim against the fund for an eligible site acquired by a county following nonpayment of taxes shall be submitted to the department for approval prior to the cleanup action and shall contain the following information:

- (1) A copy of the advance notice of claim as described in paragraph 65.113(3)“a.”
- (2) A copy of a bid by a qualified person, other than a governmental entity, to perform a site cleanup. The bid shall include a summary of the qualifications of the bidder including but not limited to prior experience in removal of hazardous substances or manure, experience in construction of confinement feeding operation facilities or manure storage structures, equipment available for conducting the cleanup, or any other qualifications bearing on the ability of the bidder to remove manure from a site. The bid must reference complying with a cleanup plan. The bid shall include a certification that the bidder has liability insurance in an amount not less than \$1 million.
- (3) A copy of the tax deed to the real estate containing the eligible facility site.
- (4) Name and address, if known, of the former owner(s) of the site. The claim shall also include a description of any efforts to contact the former owner regarding the removal of manure and any other necessary cleanup at the site.
- (5) A response to the request in the advance notice described in paragraph 65.113(3)“a” that the department will not initiate cleanup action at the site, or that 60 days have passed from the advance notice and request.

(6) A proposed cleanup plan describing all necessary activity including manure to be removed, application rates and sites, any planned remediation of site contamination, and any structure demolition and justification.

b. A county claim against the fund for an emergency cleanup condition may be submitted following the cleanup and shall contain the following information:

- (1) A copy of a bid as described in subparagraph 65.113(4)“a”(2).
- (2) Name and address of the owner(s), or former owner(s), of the site or any other person who may be liable for causing the condition.
- (3) Information on the response from the department to the notice given as described in paragraph 65.113(3)“b,” or, if none was received, documentation of the time notice was given to the department.
- (4) A cleanup plan or description of the cleanup activities performed.

65.113(5) Department processing of claims against the fund.

a. Processing of claims. The department will process claims in the order they are received.

b. The cleanup plan will be reviewed for acceptability to accomplish necessary actions according to subrule 65.113(2).

c. Review of bid. Upon receipt of a claim, the department will review the bid accompanying the claim. The department may consult with any person in reviewing the bid. Consideration will be given to the experience of the bidder, the bid amount, and the work required to perform the cleanup plan. If the department is satisfied that the bidder is qualified to perform the cleanup and costs are reasonable, the department will provide written approval to the county within 60 days from the date of receipt of the claim.

d. Obtaining a lower bid. If the department determines that it should seek a lower bid to perform the cleanup, it may obtain the names of qualified persons who may be eligible to perform the cleanup. One or more of those persons will be contacted and invited to view the site and submit a bid for the cleanup. If a lower bid is not received, the original bid may be accepted. If a bid is lower than the original bid submitted by the county, the department will notify the county that it should proceed to contract with that bidder to perform the cleanup.

65.113(6) Certificate of completion. Upon completion of the cleanup, the county shall submit a certificate of completion to the department. The certificate of completion shall indicate that the manure has been properly land-applied according to the cleanup plan and that any site contamination identified in the approved cleanup plan has been remediated and any approved structure demolition has been performed.

65.113(7) Payment of claims. Upon receipt of the certificate of completion, the department shall promptly authorize payment of the claim as previously approved. Payments will be made for claims in the order of receipt of certificates of completion.

65.113(8) Subrogation. The fund is subrogated to all county rights regarding any claim submitted or paid as provided in Iowa Code section 459.505.

567—65.114(455B,459,459B) Validity of rules. If any part of these rules is declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect, and to that end, these rules are declared to be severable.

567—65.115 to 65.199 Reserved.

DIVISION III
OPEN FEEDLOT OPERATIONS

567—65.200(455B,459A) Minimum open feedlot effluent control requirements. An open feedlot operation shall provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, scraped solids, and open feedlot effluent by using an open feedlot control method as provided in subrules 65.200(1) through 65.200(8). A release shall be reported to the department as provided in subrule 65.2(1).

65.200(1) All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than one-half foot per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility that receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

65.200(2) This subrule shall apply to an open feedlot operation which has obtained an NPDES permit pursuant to rule 567—65.3(455B,459,459A,459B) or 567—65.201(455B,459A).

a. An open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if the open feedlot operation is designed, constructed, operated, and maintained to comply with the requirements of subrule 62.4(12) and 40 CFR Part 412.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of subrule 2.4(12) and in accordance with any of the manure control alternatives listed in Appendix A located at iowadnr.gov/afo/rules or the AT system requirements in rule 567—65.207(455B,459A), the operation shall be considered to be in compliance with this rule, unless a discharge from the operation causes a violation of state water quality standards. If water quality standards violations occur, the department may impose additional open feedlot effluent control requirements upon the operation, as specified in subrule 65.200(3).

65.200(3) An open feedlot operation that has an animal unit capacity of 1,000 animal units or more, or an open feedlot operation that is a large CAFO, a medium CAFO, or a designated CAFO, shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an

open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system.

65.200(4) Alternative control practices. If, because of topography or other factors related to the site of an open feedlot operation, it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in subrule 65.200(4), the department shall allow an open feedlot operation covered by the NPDES permit application requirements of rule 567—65.3(455B,459,459A,459B) or 567—65.201(455B,459A) to use other open feedlot effluent control practices, provided the open feedlot operation satisfactorily demonstrates by appropriate methods that those practices will provide an equivalent level of open feedlot effluent control. Demonstration of equivalent performance must include the submission of computer modeling results that compares the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements that must be met for an open feedlot operation to qualify for use of an AT system and the information that must be submitted to the department are outlined in rule 567—65.207(455B,459A). Design requirements have been established for a stand-alone VTA. If other AT systems are developed that meet the equivalent performance standard established under EPA’s CAFO rules, the department will consider their acceptance on a case-by-case basis.

65.200(5) No direct discharge of open feedlot effluent shall be allowed from an open feedlot operation into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.200(6) Land application.

a. General requirements. Open feedlot effluent shall be land-applied in a manner that will not cause pollution of surface water or groundwater. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high-quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. CAFOs.

(1) Land application discharges from a CAFO are subject to NPDES permit requirements. The discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent to waters of the United States from a CAFO as a result of the application of that manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where the discharge is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For the purpose of this paragraph, where the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent as specified in subrule 65.209(8), a precipitation-related discharge of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent from land areas under the control of a CAFO is an agricultural storm water discharge.

(2) Setback requirements for open feedlot operations with NPDES permits. For open feedlot operations with NPDES permits, the following is adopted by reference: 40 CFR 412.4(a), (b) and (c)(5).

65.200(7) The owner of an open feedlot operation who discontinues the use of the operation shall remove

and land-apply in accordance with state law all manure, process wastewater and open feedlot effluent from the open feedlot operation structures as soon as practical but not later than six months following the date the open feedlot operation is discontinued. The owner of a CAFO shall maintain compliance with all requirements in the CAFO's NPDES permit until all manure, process wastewater and open feedlot effluent has been removed and land applied pursuant to the CAFO's NMP, and the NPDES permit has been terminated in accordance with subrule 65.202(9).

65.200(8) Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements:

a. Stockpiles must be land-applied in accordance with subrule 65.200(6) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water resource, within 800 feet.

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

567—65.201(455B,459A) Departmental evaluation; CAFO designation; remedial actions.

65.201(1) The department may evaluate any AFO that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors:

a. The size of the operation and the amount of manure or process wastewater reaching waters of the United States;

b. The location of the operation relative to waters of the United States;

c. The means of conveyance of manure or process wastewater to waters of the United States;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and

e. Other relevant factors.

65.201(2) No AFO with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater from the operation is discharged into a water of the United States:

a. Through a manmade ditch, flushing system, or other similar manmade device; or

b. That originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation.

65.201(3) The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation.

65.201(4) If departmental evaluation determines that any of the conditions listed in paragraph 65.201(4) "a," "b," or "c" exist, the open feedlot operation shall institute necessary remedial actions within a time specified by the department to eliminate the conditions warranting the determination, if the operation receives a written notification from the department of the need to correct the conditions.

a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in rule 567—65.200(455B,459A);

b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent

is causing or may reasonably be expected to cause a violation of state water quality standards.

567—65.202(455B,459A) NPDES permits.

65.202(1) Existing AFOs not holding an NPDES permit. AFOs in existence prior to April 14, 2003, that were defined as CAFOs under rules that were in effect prior to April 14, 2003, but that have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. AFOs in existence on April 14, 2003, that were not defined as CAFOs under rules that were in effect prior to April 14, 2003, shall apply for an NPDES permit no later than July 31, 2007.

65.202(2) Expansion or modification of existing AFOs. A person intending to expand or modify an existing AFO that, upon completion of the expansion or modification, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 90 days prior to the scheduled expansion or modification. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been issued.

65.202(3) New AFOs. A person intending to construct a new AFO after July 22, 1987, or resuming a discontinued operations after 24 months or more, upon resumption or completion, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 180 days prior to the date operation of the ~~new~~ animal feeding facility is scheduled. Operation of the facility shall not begin until an NPDES permit has been issued.

65.202(4) Permits required as a result of departmental designation. An AFO that is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of rule 567—65.201(455B,459A)) shall apply for an NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the AFO is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.

65.202(5) Application forms and requirements. An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. Applications shall include an NMP as required in rule 567—65.209(455B,459A). Applications involving AT systems shall include results of predictive computer modeling as required by subrule 65.207(6). The application shall be signed and certified by the person who is legally responsible for the AFO and its associated manure or process wastewater control system.

65.202(6) Compliance schedule. When necessary to comply with a standard that must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 567—65.203(455B,459A).

65.202(7) Permit conditions. NPDES permits shall contain conditions required by 40 CFR 122.41, monitoring conditions required by 40 CFR 122.48, and conditions considered necessary by the department to ensure compliance with all applicable rules of the department; to ensure that the production area and land application areas are operated and maintained as required by Iowa law; to protect the public health and beneficial uses of waters of the United States; and to prevent water pollution from manure storage or application operations. Any more stringent conditions of Iowa Code chapter 459A, subrule 62.4(12), and this chapter that apply to AFOs shall govern. For CAFOs that maintain cattle, swine, or poultry, the following applicable conditions shall be included:

a. NMP. Open feedlot CAFOs shall comply with the requirements of rule 567—65.209(455B,459A) and any additional NMP requirements for CAFOs in these rules. CAFOs that seek to obtain coverage under an NPDES permit shall have an NMP developed and implemented upon the date of permit coverage.

b. Inspections and recordkeeping.

(1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted, and at a minimum, the following must be included:

1. Weekly inspections of all storm water diversion, runoff diversion structures, and devices channeling contaminated storm water to the open feedlot operation structure.
2. Daily inspection of water lines, including drinking water or cooling water lines.

(2) Corrective actions. Any deficiencies found as a result of the inspections required in subparagraph 65.202(7)“b”(1) or as a result of the liquid level reporting required in paragraph 65.202(7)“e” must be corrected as soon as possible.

(3) The following records must be maintained on site for a period of five years from the date they are created and must be made available to the department upon request:

1. Records documenting the inspections required in subparagraph 65.202(7)“b”(1).
2. Records of weekly liquid level observations as required in paragraph 65.202(7)“e.”
3. Records documenting any actions taken to correct deficiencies as required in subparagraph 65.202(7)“b”(2).

c. Transfer of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent. Prior to transferring manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent to other persons, a CAFO must provide the recipient of the manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent with the most current nutrient analysis. A CAFO must retain for five years records of the date, recipient name and address, nutrient analysis and approximate amount of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent transferred to another person.

d. Minimum monitoring requirements for AT systems. Monitoring is required for the entire operational life of the AT system. The department may reduce or revise monitoring requirements after the first five years of system operation. During the first five years of operation of an AT system, the following minimum monitoring will be required:

(1) Discharge monitoring. An effluent collection point must be established at the outlet of the AT system, and the flow volume recorded and an effluent sample collected on each day a discharge from the AT system occurs. Discharge samples must be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH₄ N, total P, COD, total suspended solids, and chloride.

(2) Discharge monitoring—tile lines. If the AT system includes a perforated tile system installed under any VTA berms to enhance infiltration within the VTA, water samples shall be collected from a sampling point located downgradient of the VTA on each individual tile line or combination of tile lines on the following schedule: one sample shall be taken from each sampling point in March or April of each year when the tile system is flowing and the level of flow in the tile system recorded at the time of sampling. If there is no discharge from the tile line at a time that meets these requirements, documentation on appropriate department forms can be substituted for the sample and analysis. Collected samples shall be submitted to a certified laboratory and analyzed for Ortho-phosphate as P.

(3) Groundwater monitoring. A minimum of two groundwater monitoring wells or piezometers (one upgradient and one downgradient) must be established at each AT system. Additional wells or piezometers may be required if the department determines they are necessary to adequately assess the impacts the AT system is having on groundwater. Samples must be collected from these wells in March or April of each year and analyzed for NH₄ N, NO₃ N, Ortho phosphate as P, and chloride.

(4) Soil sampling. Both shallow and deep soil sampling is required in the VTAs of an AT system.

1. Shallow soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated annually. Within the VTA, a minimum of three sampling locations shall be established at the entrance to each VTA to be sampled. The three sampling locations shall be spread evenly across the entrances to adequately monitor the effluent application onto the VTAs. Samples shall be collected in the spring. Each sample shall be taken to a depth of six inches and analyzed for pH and P using the Mehlich-3 method.

2. Deep soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated every five years prior to the submission of an application for an NPDES permit renewal. A minimum of two sampling sites shall be established within each VTA to be sampled, one located where runoff enters the VTA, generally the same location as the shallow soil sampling location, and one where runoff is discharged from the VTA. Soil samples shall be taken from these sites to a depth of four feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. All samples shall be analyzed for NO₃ N, NH₄ N, pH, and P by the Mehlich-3 method.

If the length of effluent flow through the VTA exceeds 400 feet, an additional soil sample representing the zero to six-inch depth should be taken for each additional 200 feet of VTA length. Samples shall be analyzed for NO₃ N, NH₄ N, pH, and P by the Mehlich-3 method.

e. Quarterly reporting requirements for large CAFOs with outside liquid impoundments. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters; documenting daily precipitation; weekly impoundment liquid levels; volume of liquid removed from the impoundments; and the date, time, duration, and estimated volume of any overflow. Liquid levels must be obtained by observing a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour precipitation event.

f. Annual reporting requirements for all CAFOs with systems other than AT systems. Permittees with systems other than an AT system must submit an annual report to the department by January 10 of the following year. The annual report must include:

- (1) The number and type of animals in the open feedlot operation;
- (2) Estimated amount of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons);
- (3) Estimated amount of total manure transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- (4) Total number of acres for land application covered by the NMP and the total number of acres under control of the CAFO that were used for land application of manure in the previous 12 months;
- (5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
- (6) A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner;
- (7) Actual crops planted and actual yield for the preceding 12 months; and
- (8) Results of all samples of manure, litter and process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land-applied.

g. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

- (1) Daily precipitation.
- (2) Dates on which manure, process wastewater, settled open feedlot effluent, open feedlot effluent, or settleable solids were removed from the production area and estimated amounts of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent removed (tons/gallons).
- (3) Dates on which discharges from the production area or the AT system occurred and the estimated duration and volume of discharge on each discharge date.
- (4) Results of laboratory analyses of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

h. Annual reporting requirements for CAFOs with AT systems. A permittee shall submit an annual report by January 10 of the following year. The annual report must include all of the following:

- (1) The number and type of animals in the open feedlot operation.
- (2) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons).
- (3) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent transferred to other persons by the CAFO in the previous 12 months (tons/gallons).
- (4) Total number of acres for land application covered by the NMP and the total number of acres under control of the CAFO that were used for land application of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent in the previous 12 months.
- (5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open

feedlot effluent discharges from the production area or AT system that have occurred in the previous 12 months, including date, time, and approximate volume.

(6) Harvest dates and estimated amounts of forage removed from the AT system during the previous 12 months.

(7) Results of soil and groundwater monitoring well sampling within the AT system during the previous 12 months.

(8) A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.

65.202(8) NPDES permit renewal.

a. General requirements. An NPDES permit may be granted for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted AFO that ceases to be a CAFO will be exempted from the need to retain an NPDES permit if the permittee can demonstrate to the satisfaction of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

b. Permits involving use of AT systems.

(1) Renewal of a permit involving use of an AT system is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system that is designed and operated as required by statute, subrule 62.4(12) and this division of this chapter.

(2) If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system. Open feedlot operations found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit that allows continued use of the AT system.

65.202(9) Permit amendment, revocation, and reissuance or termination. The department may amend, revoke and reissue or terminate in whole or part any NPDES permit for cause, either at the request of any interested person, including the permittee, or upon the director's initiative. Any more stringent requirement pursuant to 40 CFR 122.62, 122.63 or 122.64 shall control. All requests shall be in writing and shall contain reasons for the request. Cause for permit amendment, revocation and reissuance, or termination may include but is not limited to the following:

- a.* Violation of any term or condition of the permit.
- b.* Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.
- c.* A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- d.* Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.
- e.* Failure to provide all required application material or appropriate fees.
- f.* A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.

567—65.203(455B,459A) Construction permits.

65.203(1) Open feedlot operations required to obtain a construction permit. An open feedlot operation must obtain a construction permit prior to any of the following:

- a.* Constructing or expanding a settled open feedlot effluent basin or AT system or installing a settled open feedlot effluent transfer piping system if the open feedlot operation is required to be issued an NPDES permit.
- b.* Increasing the animal unit capacity of the open feedlot operation to more than the animal unit capacity approved by the department in a previous construction permit.
- c.* Increasing the volume of settled open feedlot effluent, settleable solids or open feedlot effluent stored at the open feedlot operation to more than the volume approved by the department in a previous construction

permit.

d. Repopulating the open feedlot operation if it was discontinued for 24 months or more and the animal unit capacity will be 1,000 animal units or more.

65.203(2) *When a construction permit is not required.*

a. Research colleges. A construction permit is not required for construction of a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation that is owned by a research college conducting research activities as provided in Iowa Code section 459A.105.

b. Solids settling facilities. If only solids settling facilities are being constructed, a construction permit is not required. If solids settling facilities are proposed as part of a project that includes facilities that require a construction permit, then the proposed solids settling facilities are subject to a construction permit.

65.203(3) *Applications that cannot be approved.* The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An NMP as provided in rule 567—65.209(455B,459A).

b. An engineering report, construction plans, and specifications prepared by a PE or an NRCS-qualified staff person certifying that the design of the settled open feedlot effluent basin or AT system complies with the construction design standards required in this division.

65.203(4) *Plan review criteria; time for approval or disapproval.*

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications, unless inconsistent with federal or state law or these rules, and United States Department of Commerce precipitation data will be used in the review of large CAFOs. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used. Medium CAFOs and designated CAFOs shall be evaluated using the department's professional judgment.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.203(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within three years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.203(6) *Revocation of construction permits.* The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a permit expiring according to subrule 65.203(5) if it determines that the operation of the open feedlot operation constitutes a clear, present and impending danger to public health or the environment.

65.203(7) *Permit prior to construction.* An applicant for a construction permit shall notify the department prior to the start of construction for any open feedlot operation structure not required to be covered by a construction permit. The applicant shall not begin construction of a settled open feedlot effluent basin or AT system, or begin installation of a settled open feedlot effluent transfer piping system, until the person has been granted a permit for the construction by the department.

567—65.204(455B,459A) Construction permit application. An open feedlot operation required to obtain a

construction permit in accordance with the provisions of subrule 65.203(1) shall apply for a construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.204(1) Conceptual design. Prior to submitting an application for a construction permit, the applicant may submit a conceptual design and site investigation report to the department for review and comment.

65.204(2) Application for a construction permit for an open feedlot operation shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed settled open feedlot effluent basin or AT system to achieve the level of control required of the open feedlot operation. A construction permit application shall include the following:

a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including the owner's mailing address and telephone number.

b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.

c. The location of the open feedlot operation.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation that is not expanding;

(2) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation that is expanding;

(3) The construction of a settled open feedlot effluent basin or AT system for a proposed new open feedlot operation.

e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

f. An engineering report, construction plans and specifications prepared by a PE or by an NRCS-qualified staff person for the settled open feedlot effluent basin or AT system.

g. A report on the soil and hydrogeologic information for the site, as described in subrules 65.206(2) and 65.207(4).

h. Information including but not limited to maps, drawings and aerial photos that clearly show the location of all the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or AT systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within 1,250 feet of the open feedlot operation.

(3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well that is located less than the distance from the open feedlot operation required by rule 567—65.205(455B,459A). Information shall also be provided as to whether the proposed settled open feedlot effluent basin or AT system will meet all applicable separation distances.

567—65.205(455B,459A) Water well separation distances for open feedlot operations.

65.205(1) *Unformed settled open feedlot effluent basins.* Unformed settled open feedlot effluent basins shall be separated from water wells as follows:

a. Public wells. 1,000 feet from shallow wells and 400 feet from deep wells;

b. Private wells. 400 feet from both shallow wells and deep wells.

65.205(2) *Open feedlots, solids settling facilities, formed settled open feedlot effluent basins, feed storage runoff control structures and AT systems.* Open feedlots, solids settling facilities, formed settled open feedlot effluent basins, feed storage runoff control structures and AT systems shall be separated from water wells as follows: for both public wells and private wells, 200 feet from shallow wells and 100 feet from deep wells.

567—65.206(455B,459A) Settled open feedlot effluent basins—investigation, design and construction requirements. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to Iowa Code section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.206(1) Drainage tile investigation and removal. Prior to constructing a settled open feedlot effluent basin, the site for the basin shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines. Prior to the excavation for an unformed manure storage structure, an inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm. Drainage tile lines discovered during the tile inspection of a settled open feedlot effluent basin shall be removed and rerouted in the inspection trench or in an area outside of the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of the berm.

65.206(2) Soils and hydrogeologic report. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to rule 567—65.203(455B,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.204(455B,459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-06 or D 2488-06.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the basin reflecting the continuous soil profile existing within the area of the basin. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the basin.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow stem augers and other suitable methods that do not result in soil layer mixing may be used.

(4) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in subparagraph 65.206(3)“a”(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in subparagraph 65.206(3)“a”(2).

(5) Upon abandonment of soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the basin liner.

65.206(3) Hydrology.

a. For purposes of this rule, groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for either a formed settled open feedlot effluent basin or an unformed settled open feedlot effluent basin. Three temporary monitoring wells shall be developed according to paragraph 65.108(6)“c.” The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed settled open feedlot effluent basin, or to at least two feet below the proposed bottom of the footings of a formed settled open feedlot effluent basin. In addition, the wells must be installed as follows:

1. Unformed basins. For an unformed settled open feedlot effluent basin, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.206(2)“c.”

2. Formed basins. For a formed settled open feedlot effluent basin, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed settled open feedlot effluent basin is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.206(3)“c,” the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin’s liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph 65.206(3)“b”(2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the settled open feedlot effluent basin is located.

2. Drainage tile lines are installed horizontally within 25 feet away from the outside toe of the berm of the settled open feedlot effluent basin. Drainage tile lines shall be placed in a vertical trench and encased in granular material that extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

d. Open feedlot operation structures exceeding storage capacity or dam height thresholds may be required to obtain department permits, as specified in rule 567—71.3(455B) and 567—Chapter 73.

65.206(4) Liner design and construction. The liner of a settled open feedlot effluent basin shall comply with all of the following:

a. The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the PE. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this paragraph, whichever is greater.

b. The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement, and will be based on moisture content and percentage of maximum density as determined by a standard 5-point proctor test performed in accordance with ASTM D698 (Method A), effective November 11, 1991. The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design

requirements are met.

65.206(5) *Berm erosion inspection and repair.* The owner of an open feedlot operation using a settled open feedlot effluent basin shall inspect the berms of the basin at least semiannually for evidence of erosion. If the inspection reveals erosion which may impact the basin's structural stability or the integrity of the basin's liner, the owner shall repair the berms.

65.206(6) *Unformed basins containing confinement manure and open feedlot effluent.* Unformed basins containing confinement manure and open feedlot effluent shall meet the confinement construction standards and separation distance requirements provided in Division II of this chapter. The unformed basin design shall ensure adequate storage for the annual manure generation of confinement animals, the annual runoff from the open feedlot portion, including the basin surface area, and the open feedlot runoff resulting from the 25-year, 24-hour precipitation event below the two-foot freeboard level.

65.206(7) *Settled open feedlot effluent basin (SOFEB) design and operation requirements.*

a. All SOFEBs shall have a minimum ten-foot wide top of dike.

b. All SOFEBs shall have a minimum three-foot horizontal to one-foot vertical interior and exterior side slopes.

c. All SOFEBs shall have depth markers installed labeling each foot of depth and critical pumping depths noted according to the designed operating system.

d. All SOFEBs shall be designed using the latest available NOAA Atlas 14 Volume 8 Version 2, effective 2013, rainfall data for the county where the SOFEB is located. NOAA data can be obtained from the National Weather Service website.

567—65.207(455B,459A) AT systems—design requirements.

65.207(1) *Containment volume.*

a. Adequate capacity must be provided within the AT system or within the solids settling facility for the open feedlot operation to contain expected open feedlot effluent from November 1 to March 30 or to hold the precipitation event as required by paragraph 65.200(2) "a," whichever is greater. Controls on the solids settling facility or the AT system shall prevent release of collected open feedlot effluent to waters of the United States during the period from November 1 to March 30.

b. If the containment volume required in paragraph 65.207(1) "a" is provided in an open feedlot operation structure whose primary purpose is to remove settleable solids from open feedlot effluent prior to discharge into an AT system, the basin shall not be required to comply with the liner design and construction requirements of subrule 65.206(4), provided the basin does not retain collected open feedlot effluent for more than seven consecutive days following a precipitation event during the period from March 30 to November 1.

65.207(2) *Solids settling.* Settleable solids shall be removed from open feedlot effluent prior to discharge of the effluent into an AT system. Solids settling shall be conducted in conformance with the requirements of paragraph 65.200(1) "b."

65.207(3) *Drainage tile investigation and removal.* Prior to constructing an AT system, the owner of the open feedlot operation shall investigate the site for the AT system for drainage tile lines. The investigation shall be made by digging a core trench to a depth of at least six feet from ground level at the projected center of the berm of the AT system. A written record of the investigation shall be submitted as part of the construction certification required in rule 567—65.208(455B,459A). If a drainage tile line is discovered, one of the following solutions shall be implemented:

a. The drainage tile line shall be rerouted around the perimeter of the AT system at a distance of least 25 feet horizontally separated from the toe of the outside berm of the AT system. For an area of the system where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the system.

b. The drainage tile line shall be replaced with a nonperforated tile line under the AT system. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet of separation between the nonperforated tile line and the soil surface of the AT system.

65.207(4) *Soils and hydrogeologic report.* An AT system constructed pursuant to a construction permit issued pursuant to rule 567—65.203(455B,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in

rule 567—65.204(455B, 459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the AT system.

b. Subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-06 or D 2488-06.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the proposed AT system for AT systems of five acres or less, with one additional soils investigation site utilized for each additional three acres of surface area or fraction thereof. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed AT system site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed AT system. The soils investigation shall be conducted to a minimum depth of ten feet below the elevation of the soil surface of the proposed AT system.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Investigation methods may include soil corings using hollow stem augers, soil test pits, or other suitable methods that do not result in soil layer mixing.

(4) Soil core holes may be used to determine current groundwater levels by completing the core holes as temporary monitoring wells and measuring the water levels in these wells not earlier than seven days after installation.

(5) Upon abandonment of the soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If soil test pits or other excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the AT system.

65.207(5) Hydrology—groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

a. Groundwater level measurements. Groundwater levels shall be measured using at least one of the following methods:

(1) Temporary monitoring wells. Three temporary monitoring wells shall be developed to a minimum of ten feet below the surface of the proposed AT system and constructed in accordance with requirements of paragraph 65.109(6)“c.” The top of the well screen shall be within five feet of the ground surface. These monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.207(4)“c.”

(2) Test pits. Test pits may be used in lieu of temporary monitoring wells to determine the seasonal high-water table or prior to the construction of an AT system to ensure the required separation distance to the seasonal high-water table is being met. The bottom of each pit shall be a minimum of five feet below the proposed surface of the AT system. However, if the test pit is also being used to conduct the soils investigation required in paragraph 65.207(4)“c,” the bottom of the pit shall be a minimum of ten feet below the surface of the proposed AT system. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or an NRCS-qualified staff person. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. Test pits shall be located as needed to provide an accurate assessment of soil materials and seasonal high groundwater levels throughout the area of the proposed AT system. A description of the materials present in the test pit shall be documented by all of the following:

1. Digital photos;
2. Description of soils including mottling;

3. Weather conditions both prior to and during the period in which test pits are open.

b. Determination of seasonal high-water table. The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells or test pits not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling found in soil cores and test pits, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed, the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

c. Seasonal high-water table. The seasonal high-water table shall be a minimum of four feet below the finished grade of a VTA.

65.207(6) Stand-alone VTA.

a. Computer modeling. Results of predictive computer modeling for the proposed alternative technology system shall be used to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be approved and provided to the department.

b. Size. The computer model used to determine whether the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VTA. However, in no case shall the size of the VTA be less than the following:

(1) 100 percent of the total drainage area (feedlot and other) served if the soil permeability is from six-tenths of an inch to two inches per hour.

(2) 200 percent of the total drainage area (feedlot and other) served if the soil permeability is from two-tenths to six-tenths of an inch per hour.

c. Slope. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders, at a maximum six inches tall, or other practices may be required to maintain uniform flow of settled open feedlot effluent across the width of the VTA as flow moves downslope through the VTA.

f. Soil permeability. Soil permeability within the VTA must be from two-tenths to two inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VTA. Design information must be provided that demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of subparagraph 65.202(7)“d”(2).

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet. A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater quality shall not prohibit use of the site.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VTA and underground bedrock.

k. Flooding. The VTA must be constructed in areas that are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Designated use streams referenced in 567—subrule 61.3(5). A minimum distance of 500 feet or ½ foot distance per animal unit capacity of the feedlot area which drains to the VTA, whichever is greater, shall be provided.

(2) All other uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

567—65.208(455B,459A) Construction certification.

65.208(1) The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin or AT system as provided in rule 567—65.203(455B,459A) shall submit to the department a construction certification from a PE certifying all of the following:

a. The settled open feedlot effluent basin or AT system was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 567—65.204(455B,459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The settled open feedlot effluent basin or AT system was inspected by the PE after completion of construction and before commencement of operation.

65.208(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subrules 65.206(1) and 65.207(3), shall be submitted as part of the construction certification.

567—65.209(455B,459A) NMP requirements.

65.209(1) The owner of an open feedlot operation that has an animal unit capacity of 1,000 animal units or more or that is required to be issued an NPDES permit shall develop and implement an NMP meeting the requirements of this rule. The owner of an open feedlot operation who seeks to obtain or is required to be issued an NPDES permit shall develop and implement an NMP meeting the requirements of this rule no later than the date on which the NPDES permit becomes effective. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

65.209(2) Not more than one open feedlot operation shall be covered by a single NMP. For an open feedlot operation that is required to have an NPDES permit and the AFO includes an open feedlot operation and a confinement feeding operation, the NMP must include both the open feedlot operation and the confinement feeding operation if the confinement feeding operation does not have an MMP. If the confinement feeding operation portion of the AFO does have an MMP as required in rules 567—65.110(455B,459,459B) and 567—65.111(455B,459,459B), the confinement feeding operation portion shall not be included in the NMP; however, in that event, the MMP must be amended to include the information specified in paragraph 65.209(8)“e.”

65.209(3) A person shall not remove manure, process wastewater or open feedlot effluent from an open feedlot operation structure that is part of an open feedlot operation for which an NMP is required under this rule, unless the department approves an NMP as required in this rule.

65.209(4) The department shall not approve an application for a permit to construct a settled open feedlot effluent basin or AT system unless the owner of the open feedlot operation applying for approval submits an NMP together with the application for the construction permit as provided in rule 567—65.203(455B,459A). The owner shall also submit proof that the owner has published a notice for public comment as provided in

subrule 65.209(7).

65.209(5) If a construction permit is required as provided in rule 567—65.203(455B,459A), the department shall approve or disapprove the NMP as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the NMP within 60 days from the date that the department receives the NMP.

65.209(6) Prior to approving or disapproving an NMP as required in this rule, the department may receive comments exclusively to determine whether the NMP is submitted according to procedures required by the department and that the NMP complies with the provisions of this rule.

65.209(7) Public notice.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where manure, process wastewater, or open feedlot effluent that originates from the open feedlot operation may be applied under the terms and conditions of the NMP.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the NMP.
 (2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where manure, process wastewater, or open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the NMP may be examined as provided in Iowa Code section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subrule. If such a request is received, the public hearing must be conducted within 30 days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subrule by accessing the department's Internet website. The notice for public comment shall include the address of the department's Internet website as required by the department.

65.209(8) Except as provided in paragraph 65.209(8) "f," an NMP shall include all of the following:

a. An estimate of the nitrogen and phosphorus concentration of manure, process wastewater and open feedlot effluent and an estimate of the manure, process wastewater, and open feedlot volume or weight produced by the open feedlot operation, in accordance with 65.111(3).

b. Application rate calculations consistent with the requirements of subrule 65.111(12). The 100 pounds of available nitrogen per acre limitation specified in paragraph 65.111(13) "c" (applicable to open feedlot operations and combined open feedlot operations and confinement operations with an NPDES permit because of requirements in subrule 65.111(4)) pertaining to liquid manure applied to land currently planted to soybeans or to land where a soybean crop is planned applies only to liquid manure, process wastewater or settled open feedlot effluent.

c. The location of manure application. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the manure, process wastewater or open feedlot effluent may be applied. The written agreement shall indicate the number of acres on which the manure, process wastewater or effluent may be applied and the length of the agreement.

d. A phosphorus index of each field in the nutrient management plan, as defined in paragraph 65.111(12) "a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation.

e. Information that shows all of the following:

(1) There is adequate storage for manure, process wastewater, stockpiled manure and open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to prevent discharge of pollutants to surface water and

to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on site are not disposed of in manure, process wastewater, an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

(6) Equipment used for the land application of manure, process wastewater or open feedlot effluent must be periodically inspected for leaks.

(7) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(8) Protocols for appropriate testing of manure, process wastewater, open feedlot effluent and soil.

(9) Protocols to land-apply manure, process wastewater or open feedlot effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, process wastewater or open feedlot effluent.

(10) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

f. Sales of scraped solids or settleable solids licensed by IDALS. Open feedlot operations that will sell scraped solids or settleable solids as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or bulk dry animal nutrient product under Iowa Code chapter 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A as regulated by IDALS and may, in lieu of complying with this subrule for that portion of open feedlot effluent, submit to the department a copy of the operation's site-specific IDALS license or documentation for any scraped solids or settleable solids that will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved NMP form for sales of scraped solids or settleable solids.

g. An open feedlot operation must submit a complete NMP using a new phosphorus index, including soil sampling as required in subrule 65.111(11), for each field in the NMP a minimum of once every five years, submitting the plan with the NPDES permit renewal application if the open feedlot operation has an NPDES permit.

65.209(9) If an open feedlot operation uses an alternative technology system as provided in rule 567—65.207(455B,459A), the NMP is not required to provide for settled open feedlot effluent that enters the AT system.

65.209(10) Current NMP; recordkeeping; record inspections.

a. Current NMP. The owner of an open feedlot operation who is required to submit an NMP shall maintain a current NMP at the site of the open feedlot operation and shall make the current NMP available to the department upon request. If nutrient management practices change, a person required to submit an NMP shall make appropriate changes consistent with this rule. If values other than the standard table values are used for NMP calculations, the source of the values used shall be identified.

b. Recordkeeping. Records shall be maintained by the owner of an open feedlot operation who is required to submit an NMP. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the open feedlot operation and shall be made available to the department upon request. Records to demonstrate compliance with the NMP shall include the requirements of rule 567—65.111(455B,459,459B) and the following:

- (1) Weather conditions at time of application and for 24 hours prior to and following the application.
- (2) Date(s) when application equipment was inspected.
- (3) All applicable records identified in paragraph 65.209(8)“e.”

c. Record inspection. The department may inspect an open feedlot operation at any time during normal working hours and may inspect the NMP and any records required to be maintained.

567—65.210 to 65.299 Reserved.

DIVISION IV
ANIMAL TRUCK WASH FACILITIES

567—65.300(455B,459A) Minimum animal truck wash effluent control requirements. An animal truck wash facility shall provide for the management of manure, process wastewater, settleable solids, scraped solids, and animal truck wash effluent by using the control method as provided in subrules 65.300(1) through 65.300(4). A release shall be reported to the department as provided in subrule 65.2(1).

65.300(1) No direct discharge of animal truck wash effluent shall be allowed from an animal truck wash facility into a publicly owned lake, a known sinkhole, or an agricultural drainage well.

65.300(2) Land application.

a. General requirements. Animal truck wash effluent shall be land-applied in a manner which will not cause pollution of surface water or groundwater. Land application of animal truck wash effluent shall not exceed one inch per hour, and land application shall cease immediately if runoff occurs. Land application of animal truck wash effluent shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for animal truck wash effluent application if (1) land application areas are not frozen or snow-covered, (2) temperatures during application are greater than 32 degrees Fahrenheit, and (3) precipitation has not exceeded the water holding capacity of the soil to accept the effluent application without the possibility of runoff. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Separation distances. A person shall not apply animal truck wash effluent on land located within 750 feet from a residence not owned by the titleholder of the land, unless one of the following applies:

(1) The animal truck wash effluent is land-applied by injection or incorporation on the same date as the animal truck wash effluent was land-applied.

(2) The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the animal truck wash effluent is land-applied.

(3) The animal truck wash effluent is from a small animal truck wash facility or an animal truck wash facility that is part of a SAFO.

65.300(3) The owner of an animal truck wash facility who discontinues the use of the facility shall remove and land-apply in accordance with state law all manure, process wastewater and animal truck wash effluent from the animal truck wash effluent structures as soon as practical but not later than six months following the date the animal truck wash facility is discontinued.

65.300(4) Stockpiling of scraped solids and settleable solids. Stockpiles of solids scraped from animal truck wash facilities and stockpiles of settleable solids shall comply with the following requirements:

a. Stockpiles must be land-applied in accordance with subrule 65.300(2) as soon as possible but not later than six months after they are established.

b. Stockpiles shall not be located within 400 feet from a designated area or, in the case of a high-quality water, within 800 feet.

c. Stockpiles shall not be located in grassed waterways or areas where water ponds or has concentrated flow.

d. Stockpiles shall not be located within 200 feet of a terrace tile inlet or surface tile inlet or known sinkhole unless the stockpile is located so that any runoff from the stockpile will not reach the inlet or sinkhole.

e. Stockpiles shall not be located on land having a slope of more than 3 percent unless methods, structures or practices are implemented to contain the stockpiled solids, including but not limited to hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

567—65.301(455B,459,459A) Construction permits.

65.301(1) *Animal truck wash facilities required to obtain a construction permit.* An animal truck wash facility must obtain a construction permit as follows:

- a. Prior to construction or expansion of an animal truck wash effluent structure.
- b. When the department has previously issued the animal truck wash facility a construction permit and the volume of the animal truck wash effluent would be more than the volume approved by the department in the previous construction permit.
- c. When the animal truck wash facility is part of a confinement feeding operation and all of the following apply:
 - (1) The department has issued a construction permit or an NPDES permit for the confinement feeding operation or a letter approving a construction design statement for the confinement feeding operation in lieu of a construction permit.
 - (2) The animal truck wash effluent will be added to an existing manure storage structure resulting in a total stored volume greater than that approved in the construction permit or the construction design statement approval letter.
- d. When the animal truck wash facility is part of an open feedlot operation and all of the following apply:
 - (1) The department has issued a construction permit or an NPDES permit for an open feedlot operation.
 - (2) The animal truck wash effluent will be added to an existing settled open feedlot effluent basin resulting in a total stored volume greater than that approved in the construction permit or NPDES permit.
- e. When an animal truck wash facility is constructed or expanded as part of a SAFO that includes a manure storage structure and the animal truck wash effluent will be added to the manure storage structure.

65.301(2) *Construction permit not required.* A construction permit is not required in the following situations:

- a. When a small animal truck wash facility is constructed or expanded and remains a small animal truck wash facility.
- b. When a small animal truck wash facility is part of a SAFO and the animal truck wash effluent is added to the manure storage structure.

65.301(3) *Construction permit applications that cannot be approved.* The department shall not approve an application for a construction permit unless the applicant submits all of the following:

- a. An NMP as provided in rule 567—65.306(455B,459A).
- b. An engineering report, construction plans, and specifications prepared by a PE or an NRCS-qualified staff person certifying that the design of the animal truck wash effluent structure complies with the construction design standards required in Division III of this chapter.

65.301(4) *Plan review criteria; time for approval or disapproval.*

a. *Plan review criteria.* Review of plans and specifications shall be conducted by the department to determine the potential of the animal truck wash effluent structure to achieve the level of control being required of the animal truck wash facility. Applicable criteria contained in federal law, state law, these rules, NRCS design standards and specifications unless inconsistent with federal or state law or these rules will be used in this review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

b. *Time for approval or disapproval.* The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice but for not more than 30 days. However, the department shall not provide for more than one continuance.

65.301(5) *Expiration of construction permits.* The construction permit shall expire if construction, as defined in rule 567—65.6(455B,459,459A,459B), is not begun within one year and completed within three

years of the date of issuance. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

65.301(6) *Revocation of construction permits.* The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or refuse to renew a construction permit expiring according to subrule 65.301(5) if it determines that the operation of the animal truck wash facility constitutes a clear, present and impending danger to public health or the environment.

65.301(7) *Permit prior to construction.* An applicant for a construction permit shall notify the department prior to the start of construction for any animal truck wash facility. The applicant shall not begin construction of an animal truck wash facility until the person has been granted a permit for the construction by the department.

65.301(8) *Materials used in animal truck wash.* A facility that performs acid washing, aluminum brightening, or other such processes that significantly increase the metals concentration of the effluent is not considered an animal truck wash facility for purposes of this provision. Use of disinfectant materials to control and prevent animal diseases is allowed.

567—65.302(455B,459,459A) Separation distances.

65.302(1) *Separation distances for the construction or expansion of an animal truck wash effluent structure.*

a. An animal truck wash effluent structure shall not be constructed or expanded within 1,250 feet from a residence not owned by the titleholder of the animal truck wash facility, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

b. An animal truck wash effluent structure shall not be constructed or expanded within 100 feet from a public thoroughfare.

c. Any separation distance required for a confinement feeding operation structure and a location or object specified in Table 6 for “Water Wells” and “Other Distances” located at iowadnr.gov/afo/rules shall also apply to the animal truck wash effluent structure and that same location or object.

d. An animal truck wash effluent structure shall not be constructed or expanded on land that is part of a one hundred year floodplain.

65.302(2) *Exemptions to separation distances for the construction or expansion of an animal truck wash effluent structure.*

a. Paragraph 65.302(1) “*a*” does not apply if a residence, educational institution, bona fide religious institution, or commercial enterprise was constructed or expanded, or if the boundaries of a public use area were expanded, after the date that the animal truck wash facility was established. The date the animal truck wash facility was established is the date on which the animal truck wash facility commenced operating. A change in ownership or expansion of an animal truck wash facility shall not change the date of operation.

b. Paragraphs 65.302(1) “*a*” and “*b*” do not apply if the titleholder of the land benefiting from the separation distance requirement, including a person authorized by the titleholder, executes a written waiver with the owner of the animal truck wash effluent structure. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the separation distance requirement may execute a written waiver with the titleholder of the land where the structure is located. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The waiver shall be specific to the construction or expansion project for which it is submitted. The waiver may include specific language to include future projects or expansions.

c. Paragraphs 65.302(1) “*a*” and “*b*” shall not apply to small animal truck wash facilities.

d. Exemptions to separation distance requirements from water sources, major water sources, known sinkholes, agricultural drainage wells and designated wetlands and secondary containment. As specified in Iowa Code section 459.310(3), the separation distance required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, water sources, major water sources and designated wetlands, specified in Iowa Code section 459.310 and summarized in Tables 6 to 6d located at iowadnr.gov/afo/rules, shall not apply to a farm pond or privately owned lake as defined in Iowa Code section 462A.2 or to an animal truck wash effluent structure constructed with a secondary containment barrier according to subrule

65.108(11). To qualify for this separation distance exemption, the design of the secondary containment barrier shall be filed in accordance with subrule 65.104(5) prior to beginning construction of the animal truck wash facility.

e. Paragraphs 65.302(1)“*c*” and “*d*” shall not apply to the replacement of an unformed animal truck wash effluent structure constructed prior to April 28, 2003, with a formed animal truck wash effluent structure. The capacity of a replacement animal truck wash effluent structure shall not exceed the amount required to store animal truck wash effluent for any 18-month period.

65.302(3) *Unformed animal truck wash effluent structures.* Unformed animal truck wash effluent structures shall be separated from water wells as follows:

- a. Public wells.* 1,000 feet from shallow wells and 400 feet from deep wells;
- b. Private wells.* 400 feet from both shallow wells and deep wells.

65.302(4) *Formed animal truck wash effluent structures.* Formed animal truck wash effluent structures shall be separated from water wells as follows: for both public wells and private wells, 200 feet from shallow wells and 100 feet from deep wells.

567—65.303(455B,459A) Construction permit application.

65.303(1) An animal truck wash facility required to obtain a construction permit in accordance with the provisions of subrule 65.301(1) shall apply for the construction permit at least 90 days before the date that construction, installation, or modification is scheduled to start.

65.303(2) Application for a construction permit for an animal truck wash facility shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed animal truck wash effluent structure to achieve the level of control required of the animal truck wash facility. A construction permit application shall include the following:

- a.* The name of the animal truck wash facility and the name of the owner of the animal truck wash facility, including the owner’s mailing address and telephone number.
- b.* The name of the contact person for the animal truck wash facility, including the person’s mailing address and telephone number.
- c.* The location of the animal truck wash facility.
- d.* A statement providing that the application is for any of the following:
 - (1) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility that is not expanding;
 - (2) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility that is expanding;
 - (3) The construction of an animal truck wash effluent structure for a proposed new animal truck wash facility.
- e.* An engineering report, construction plans, and specifications prepared by a PE or by an NRCS-qualified staff person. The engineering report must demonstrate that the storage capacity of the animal truck wash effluent structure is equal to or greater than the amount of effluent to be stored for any six-month period, in addition to two feet of freeboard for an unformed animal truck wash effluent structure or one foot of freeboard for a formed animal truck wash effluent structure.
- f.* A report on the soil and hydrogeologic information for the site, as described in subrule 65.304(2).
- g.* Information including but not limited to maps, drawings and aerial photos that clearly show the location of all the following:
 - (1) The animal truck wash facility and all existing and proposed animal truck wash effluent structures.
 - (2) Any animal truck wash facility under common ownership or common management and located within 1,250 feet of the animal truck wash facility.
 - (3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well that is located less than the distance from the animal truck wash facility required by subrules 65.302(3) and 65.302(4). Information shall also be provided as to whether the proposed animal truck wash effluent structure will meet all applicable separation distances.

567—65.304(455B,459A) Unformed animal truck wash effluent structure—investigation; design; construction requirements. An unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to Iowa Code section 459A.205 shall meet the design and construction requirements set forth in this rule.

65.304(1) Drainage tile investigation and removal. Prior to constructing an unformed truck wash effluent basin, the site for the basin shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. Prior to excavation for an unformed manure storage structure, an inspection trench of at least ten inches wide shall be dug around the structure to a depth of at least 6 feet below the original grade and within 25 feet of the proposed outside of the toe of the berm.

b. Drainage tile lines discovered during the tile inspection of an unformed manure storage structure shall be removed and rerouted in the inspection trench or in an area outside of the inspection trench. All tiles within the inspection trench perimeter shall be removed or completely plugged with concrete, grout or similar materials. Drainage tile lines installed at the time of construction to lower the groundwater may remain in place as long as they are outside of the proposed toe of berm.

65.304(2) Soils and hydrogeologic report. An unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to rule 567—65.301(455B,459,459A) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 567—65.303(455B,459A). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the unformed animal truck wash effluent structure.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-06 or D 2488-06.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the unformed animal truck wash effluent structure reflecting the continuous soil profile existing within the area of the unformed animal truck wash effluent structure. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed unformed animal truck wash effluent structure, including conditions found near the corners and the deepest point of the proposed unformed animal truck wash effluent structure. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the unformed animal truck wash effluent structure.

(3) By methods that identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow-stem augers and other suitable methods may be used.

(4) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in subparagraph 65.304(3)“a”(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in subparagraph 65.304(3)“a”(1).

(5) Upon abandonment of soil core holes, all soil core holes, including those developed as temporary water level monitoring wells, shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

(6) If excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the unformed animal truck wash effluent structure liner.

65.304(3) Hydrology.

a. Determination of groundwater table. For purposes of this rule, the groundwater table is the seasonal high-water table determined by a PE, a groundwater professional certified pursuant to 567—Chapter 134, or

qualified staff from the department or NRCS. If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured as provided in this subparagraph for an unformed animal truck wash effluent structure. Three temporary monitoring wells shall be installed. The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed animal truck wash effluent structure or to at least two feet below the proposed bottom of the footings of a formed animal truck wash effluent structure. In addition, the wells must be installed as follows:

1. Unformed animal truck wash effluent structure. For an unformed animal truck wash effluent structure, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.304(2)“c.”

2. Formed animal truck wash effluent structure. For a formed animal truck wash effluent structure, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed animal truck wash effluent structure is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.304(3)“c,” the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The unformed animal truck wash effluent structure shall be constructed with a minimum separation of two feet between the top of the liner of the unformed animal truck wash effluent structure and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the unformed animal truck wash effluent structure liner to artificially lower the seasonal high-water table, the top of the unformed animal truck wash effluent structure’s liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph 65.304(3)“c”(2), an animal truck wash facility shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the animal truck wash facility was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However, an animal truck wash facility that expands the area of its animal truck wash facility on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at an unformed animal truck wash effluent structure, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the unformed animal truck wash effluent structure is located.

2. Drainage tile lines are installed horizontally no greater than 25 feet away from the outside toe of the berm of the unformed animal truck wash effluent structure. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

65.304(4) Liner design and construction. The liner of an unformed animal truck wash effluent structure shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per

day at the design depth of the unformed animal truck wash effluent structure as determined by percolation tests conducted by the PE. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this subparagraph, whichever is greater.

(2) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the unformed animal truck wash effluent structure. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement and will be based on moisture content and percentage of maximum density as determined by a standard 5-point proctor test performed in accordance with ASTM D698 (Method A), effective date November 11, 1991. The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in subparagraph 65.304(4)“a”(1).

65.304(5) *Berm erosion inspection and repair.* The owner of an animal truck wash facility using an unformed animal truck wash effluent structure shall inspect the berms of the unformed animal truck wash effluent structure at least semiannually for evidence of erosion. If the inspection reveals erosion that may impact the unformed animal truck wash effluent structure’s structural stability or the integrity of the unformed animal truck wash effluent structure’s liner, the owner shall repair the berms.

65.304(6) *Basins containing confinement manure and animal truck wash effluent.* Basins containing confinement manure and animal truck wash effluent shall meet the confinement construction standards and separation distance requirements provided in Division II of this chapter. The basin design shall ensure adequate storage including two feet of freeboard for an unformed animal truck wash effluent structure or one foot of freeboard for a formed animal truck wash effluent structure. The basin shall contain the annual manure generated from all confinement animals.

65.304(7) *Formed animal truck wash effluent structures.* An animal truck wash facility electing to use a formed animal truck wash effluent structure may submit, in lieu of an engineering report, a construction design statement that meets the requirements in subrule 65.104(3).

567—65.305(455B,459A) Construction certification.

65.305(1) The owner of an animal truck wash facility who is issued a construction permit for an animal truck wash effluent structure as provided in rule 567—65.301(455B,459,459A) shall submit to the department a construction certification on a form provided by the department from a PE certifying all of the following:

a. The animal truck wash effluent structure was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 567—65.303(455B,459A). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The animal truck wash effluent structure was inspected by the PE after completion of construction and before commencement of operation.

65.305(2) A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subrule 65.304(1), shall be submitted as part of the construction certification.

567—65.306(455B,459A) NMP requirements.

65.306(1) The owner of an animal truck wash facility, other than a small animal truck wash facility, that has an animal truck wash effluent structure shall develop and implement an NMP meeting the requirements of this rule. However, an animal truck wash facility that is part of a confinement feeding operation, in lieu of submitting an NMP, may submit an original MMP and an updated MMP to the department.

65.306(2) A person shall not remove animal truck wash effluent from an animal truck wash facility for which an NMP is required under this rule, unless the department approves an NMP as required in this rule.

65.306(3) The department shall not approve an application for a permit to construct an animal truck wash

effluent structure unless the owner of the animal truck wash facility applying for approval submits an NMP together with the application for the construction permit as provided in rule 567—65.301(455B,459,459A).

65.306(4) If a construction permit is required as provided in rule 567—65.301(455B,459,459A), the department shall approve or disapprove the NMP as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the NMP within 60 days from the date that the department receives the NMP.

65.306(5) An NMP shall include all of the following:

a. Restrictions on the application of animal truck wash effluent based on all of the following:

(1) A phosphorus index of each field in the NMP, as required in subrule 65.111(12), including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P₂O₅) available to be applied from the animal truck wash facility shall be included.

(2) Calculations necessary to determine the land area required for the application of animal truck wash effluent from an animal truck wash facility based on nitrogen or phosphorus use levels (as determined by the phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the NMP and according to requirements specified in subrule 67.111(4).

b. Information relating to the application of the animal truck wash effluent, including application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner of the animal truck wash facility, the plan shall include a copy of each written agreement executed by the owner and the landowner or the person renting the land for crop production where the animal truck wash effluent may be applied. The written agreement shall indicate the number of acres on which the animal truck wash effluent may be applied and the length of the agreement.

d. An estimate of the animal truck wash effluent volume or weight produced by the animal truck wash facility.

e. Information that shows all of the following:

(1) There is adequate storage for animal truck wash effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) Surface drainage is diverted from the animal truck wash facility.

(3) Chemicals or other contaminants handled on site are not disposed of in an animal truck wash facility that is not specifically designed to store such chemicals or contaminants.

(4) Equipment used for the land application of animal truck wash effluent must be periodically inspected for leaks.

(5) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(6) Protocols for appropriate testing of animal truck wash effluent and soil.

(7) Protocols to land-apply animal truck wash effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the animal truck wash effluent.

(8) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

65.306(6) Current NMP; recordkeeping; record inspections.

a. Current NMP. The owner of an animal truck wash facility who is required to submit an NMP shall maintain a current NMP at the site of the animal truck wash facility and shall make the current NMP available to the department upon request. If nutrient management practices change, a person required to submit an NMP shall make appropriate changes consistent with this rule. If values other than the standard table values are used for NMP calculations, the source of the values used shall be identified.

b. Recordkeeping. Records shall be maintained by the owner of an animal truck wash facility who is required to submit an NMP. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the animal truck wash facility, either as a hard copy or electronically, and shall be made available to the

department upon request. Records to demonstrate compliance with the NMP shall include requirements of rule 567—65.111(455B,459,459B) and the following:

- (1) Weather conditions at time of application and for 24 hours prior to and following the application.
- (2) For animal truck wash facilities, the soil test analysis must include phosphorus.
- (3) Dates when application equipment was inspected.
- (4) All applicable records identified in paragraph 65.306(5)“e.”

c. Record inspection. The department may inspect an animal truck wash facility at any time during normal working hours and may inspect the NMP and any records required to be maintained.

These rules are intended to implement Iowa Code sections 455B.103, 455B.134, and 455B.171 and chapters 459, 459A, and 459B.

Iowa Department of Natural Resources Responsive Summary of Public Participation

567 Iowa Administrative Code Chapter 65
Animal Feeding Operations
April 16, 2024

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INTRODUCTION

On November 21, 2023, the Environmental Protection Commission (EPC) approved a Notice of Intended Action (NOIA) to rescind and replace Chapter 65. The NOIA was published in the Iowa Administrative Bulletin on December 27, 2023, as ARC 7214C.

Written comments were accepted by the Department until February 23, 2024. An in-person public hearing was held on February 14, 2024, at 1:30 at the Wallace Building in Des Moines, Iowa. A virtual public hearing was held on February 19, 2024 at 1:30.

A summary of the public comments, along with the Department's responses are below. Additionally, a list of the individuals who have submitted written comments and/or participated in the public hearing are provided in Appendices A and B.

WRITTEN PUBLIC COMMENTS

The Department received written comments via email. The comments have been summarized and grouped together by subject matter. Copies of the actual comments are available upon request. The names of those who submitted written comments are located in Appendix A of this document.

I. CHANGES.

This section contains the changes to the NOIA for Chapter 65 that will be made based on received public comments.

A. DEFINITIONS

1. DNR should review the alphabetization of the definitions as a couple of the terms, such as the term “sinkhole,” are not currently in alphabetical order.

Response: The definitions are now in proper alphabetical order.

2. Complete Application - comment proposes to add the word “substantially” before the word complete in the definition.

Response: This amendment was made to provide clarity to the rule.

3. Critical Public Use Area - The definition requires that the land be owned or managed by the government AND have the unique characteristics as listed. Not all of the properties within the categories listed in this definition meet both of these criteria. See Iowa Code § 459.102(20). At a minimum, the DNR should add a requirement that the property must still meet the statutory qualifiers to qualify as a “critical public area” instead of accepting every property in the categories of public property listed, especially the referenced county-owned properties.

Response: Iowa Code section 350.4(2) dictates when a county can acquire and accept land to be designated as a park or recreation area. That criteria aligns with the definition of critical public use area. Additionally, in an effort to provide consistency to this provision, the list of parks and recreation areas listed in paragraph 65.1(2)”d” will be provided as a static PDF list and changes to the list will require formal rulemaking. The effective date of the list will be the date the rule becomes effective. Likewise, 65.1(2)”e” that references a website has been converted to static PDF document and any changes to that document will require formal rulemaking.

4. New AFO. This definition is only used in one section of rules; move the definition to that section. 65.202(3)

Response: The definition was removed from the definitions section and incorporated into the rules at 65.202(3). The reference to discontinued operations in the definition was already incorporated into the main body of the rule at 65.103(1)”h” and 65.203(1)”d.”

5. Partially Roofed. The comment suggested the following change to this portion of the

definition, delete the bolded language and add the underlined language: “The square footage of the unroofed area shall be at least 10% of the square footage of the attached roofed **production area or manure storage structure** where animals are confined.”

Response: DNR believes it is important to consider both the area where animals are confined and production areas. However, this definition was amended to remove “or manure storage structure” since “manure storage structure” is already included in the definition of production area.

6. Sinkhole. The comment suggested the following change to the definition: Add the underlined language to the first sentence of the definition: “*Sinkhole means* any depression in the ground that has no natural external surface drainage which was caused by the dissolution or collapse of subterranean materials in a carbonate formation or in gypsum or rock salt deposits through which water may be drained or lost to the local groundwater system.”

Response: The definition of “sinkhole” was amended to remove the term “lost” from the definition.

B. KARST TERRAIN

1. In determining the presence of karst for formed storage structures, the rule states that the soil corings shall be taken to a minimum depth of 15 feet below the bottom elevation of the proposed structure. The comment states that the depth of the coring should go back to what is in the existing rule where no depth is provided or, in the alternative, the requirement should be five feet to match the rule that requires a five-foot separation distance.

Response: Paragraph 65.7(1)”b” was amended to change the minimum depth of the soil coring to seven feet. This will allow proper measurements in the varying landscapes while still assuring that the coring covers the threshold distance of five feet.

C. FLOODPLAINS

1. There are five counties that do not have FEMA maps completed through the Flood Insurance Rate Maps (FIRM) process. The intent of the legislation was always to use the FEMA maps to delineate the flood plain and Iowa Code section 459.102(42) requires the DNR to consider these FEMA maps. Because of the draft maps, DNR has a choice of either using these draft FEMA maps in the interim or requiring declaratory orders for areas with alluvial soils in those counties. For operations proposed in counties that have not gone FIRM, the maps should only be used for exclusionary purposes and the permit applicant should be allowed to challenge the delineations until they are approved by FEMA. If changes are made to the maps, the AFO siting atlas should be updated after a notice and comment rulemaking.

Response: The rule was amended to add language to allow for the permit applicant to contest the determination in the named five counties. The rules will be updated in the future when the remaining five FEMA maps are finalized.

D. CONSTRUCTION PERMITTING/CONSTRUCTION DESIGN STATEMENT

1. Previous rules allowed for the County Board of Supervisors to adopt a construction evaluation resolution to score the Master Matrix on an annual basis. The rule in the NOIA removed the requirement to submit on an annual basis and allowed for the resolution to remain in place until a County Board of Supervisors informed the DNR they no longer wanted to score the Master Matrix. Multiple comments were received regarding this change. One comment requests clarification on the re-adoption of the resolution and another comment requests that the annual requirement to submit the resolution remains in the rules to allow for counties to review this on an annual basis.

Response: The existing Chapter 65 language on this point has been reinstated. This will make clear which counties are enrolled in the Master Matrix scoring. Counties will have to annually submit construction evaluation resolutions to the DNR.

E. MANURE MANAGEMENT PLANS/NUTRIENT MANAGEMENT PLANS

1. Comment requests 65.111(2) change the following language: *MMP contents*. Confinement feeding operations **that do not sell manure** shall submit the following for that portion of the manure which will not be sold. Remove the bolded language and replace it with the underlined language that will not sell all of their manure.

Response: This amendment was made to clarify the rule.

2. Change the reference in 65.209(8)"b" from 65.111(12) to 65.111(3) to clarify that the DNR can use the confinement portion of the rules to calculate nitrogen and phosphorus in an NMP.

Response: DNR moved the authorizing statement to paragraph 65.209(8)"a."

3. (1) Iowa NRCS and Iowa State University have been in talks about the science behind how the Iowa Phosphorus Index was developed. The selection of the soil used for evaluating the sheet and rill erosion was the Dominant Critical Soil when the P-Index was developed and validated by ISU. NRCS is in the process of realigning their policy document (Tech Note 25 Iowa Phosphorus Index) back to requiring the Dominant Critical Soil for sheet and rill calculations to reflect the original science. NRCS recommend Iowa DNR maintain reference to the Dominant Critical Soil (NRCS Tech Note 29 Dominant Critical Area) similar to current Administrative Code.

Possible wording variation with more information which incorporates ephemeral gully language to better align with the need to evaluate ephemeral gully erosion for the P-Index calculations is: In all manure management plans submitted to the department for approval, the dominant critical area soil map unit will be consistent with NRCS Iowa Agronomy Technical Note No. 29: Dominant Critical Area shall be used to calculate sheet and rill erosion for the phosphorus index. When sheet and rill erosion is calculated for the phosphorus index, the soil type used for the calculation shall be a soil map unit within the steepest slope class. The steepest

slope class will be at least 10 percent of the total field area. For fields < 25 acres in size the steepest slope class will comprise ≥ 20% of the acres in the field. Once the steepest slope class is determined the soil map unit with highest area within the steepest slope class shall be selected to represent the dominant critical area.

(2) For 65.111(12) Use of the Phosphorus Index, the comment proposes to remove the bold language and replace it with the underlined language:

a. When sheet and rill erosion is calculated for the phosphorus index, **the soil map unit used for the calculation shall be the predominant highly erodible soil map unit when planning for a highly erodible field and the predominant non-highly erodible soil map unit when planning for a non-highly erodible field. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index shall be used with: (1) supporting documents and spreadsheets or (2) aerial photographs from at least four separate years, with at least one of the photographs being from the most vulnerable time of the year.** the soil type map unit used for the calculation shall be the most erosive soil map unit that is at least 10 percent of the total field area. In all manure management plans submitted to the department for approval, the dominant critical soil map unit consistent with NRCS conservation planning guidelines shall be used to calculate sheet and rill erosion for the phosphorus index. (See NRCS Technical Note No. 29.)

(3) Another comment suggests that the rule should specify if photographs show ephemeral gullies, the erosion calculations consistent with NRCS Technical Note 25 must be provided.

Response: The provision was modified to address technical issues.

4. Proposed change to 65.111(15) for NMPs and 65.209(8)"f") for MMPs:

Remove the term “commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 and 200A” and replace it with “bulk dry animal nutrient product under Iowa Code Chapter 200A.” This change is suggested for both NMPs and MMPs.

Response: Based on the comments submitted the language of the two provisions was amended to allow for the submission of other IDALS documentation and to distinguish between commercial fertilizer or soil conditioner under Iowa Code chapter 200 and bulk dry animal nutrient product under Iowa Code chapter 200A.

II. NO CHANGES.

This section contains public comments that did not result in changes to Chapter 65.

A. DEFINITIONS

1. Alternate Technology Settled Open Feedlot Effluent Control System - add the underlined portion to the definition. “*Alternate Technology Settled Open Feedlot Effluent Control System* means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent. The department may

allow an open feedlot operation covered by the NPDES permit application requirements of 567—65.102(459A) or 567— 65.103(455B,459A) to use an AT system, provided the open feedlot operation satisfactorily demonstrates the AT system will provide an equivalent level of performance to that achieved by a runoff containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter. Demonstration of equivalent performance must include submitting results of computer modeling which compares the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements which must be met for an open feedlot operation to qualify for use of an AT system and the information which must be submitted to the department are outlined in rule 567—65.110(459A).

Design requirements have been established for two types of AT systems. These are a vegetative infiltration basin (VIB) followed by a vegetative treatment area (VTA) and a stand-alone vegetative treatment area (VTA). If other AT systems are developed that meet the equivalent performance standard established under EPA’s CAFO rules, the department will consider their acceptance on a case-by-case basis.”

Response: This language is provided in the body of the Open Feedlot portion of the rule, see subrule 65.200(4).

2. Animal Capacity - add the underlined portion to the definition. “*Animal Capacity* means the maximum number of animals which the owner or operator will confine in an AFO at any one time. The animal capacity shall be what is currently approved or permitted on the site and is listed in the MMP or NMP, unless a portion of the facility has been properly closed or taken out of operation through the small AFO election and shall be documented by the submittal of delivery receipts after each livestock delivery. Double stocking is prohibited. In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned, in accordance with the definition of ‘abandoned AFO structure.’”

Response: The suggested amendment exceeds the scope of Executive Order 10.

3. Provide a definition of “Credible Evidence”

Response: The term “credible evidence” is not used in this rule; however, the rule does use the term “credible” when describing sources that DNR relies on to make determinations. When the term “credible” is used the rule offers examples of what would be considered credible, see subrule 65.111(1), or the rule provides factors that must be included, see subrule 65.111(11).

4. Commercial Enterprise - remove the bolded language. “*Commercial Enterprise* means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, **which is customarily and regularly used by the general public during the entire calendar year** and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.”

Response: This definition is in Iowa Code section 459.102(10). The proposal would require a legislative change.

5. Common Management - remove bolded language, add underlined language. “*Common Management* means **significant control by** the ability of an individual or the same group of individuals to determine of the management of the day-to-day operations of each of two or more confinement AFOs. “Common management” **does not** includes the corporation that controls a contract livestock facility by a contractor as defined in Iowa Code section 202.1.”

Response: The suggested amendment exceeds the scope of Executive Order 10.

6. Common Ownership - remove bolded language, add underlined language. “*Common Management* means the ownership of an animal confinement feeding operation as a sole proprietor, or a 10 percent or more ownership interest held by a person, in each of two or more animal confinement feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or **both other family members**. When applying for a permitted or unpermitted adjacent AFO under an LLC or partnership, a legally signed Operating Agreement developed when the LLC or partnership is formed that lists each owner and their percentage of ownership is required.”

Response: The construction permit application already requires a signature for accuracy/truthfulness. A legal operating agreement does not guarantee more accurate or truthful information. Additionally, the application includes an Interested Parties form that requires the percentage of ownership for the owners. The amendment to add “family members” exceeds the scope of Executive Order 10.

7. (1) Covered. A formed manure storage structure beneath the floor in a confinement building should not be considered covered; the roof of the building does not provide adequate cover.

(2) Covered. Remove bolded language. “*Covered* means organic or inorganic material, placed upon an animal feeding operation AFO structure used to store manure, which significantly reduces the exchange of gasses between the stored manure and the outside air. Organic materials include, but are not limited to, a layer of chopped straw, or other crop residue. **or a naturally occurring crust on the surface of the stored manure**. Inorganic materials include, but are not limited to, wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. **A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.**”

Response: The suggested amendments exceed the scope of Executive Order 10.

8. Document. Add the following statement to the definition of document: “...Document also includes official legal business documents for an LLC listing each owner and their percent of ownership along with the signature page.”

Response: These are existing forms currently required in the construction permit process.

9. Educational Institution. Add the underlined language to the existing definition. “*Educational Institution means* a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts including buildings where homeschool students study who are enrolled in homeschool programs served by local school districts.”

Response: The current definition is in Iowa Code section 459.102(27). The proposal would require a legislative change.

10. Interest. Remove bolded language, add underlined language. “*Interest means* ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ownership interest is an interest when it is held directly, indirectly through a spouse **or dependent child or both** or other family member.”

Response: The suggested amendment exceeds the scope of Executive Order 10.

11. Manure. Iowa Code’s definition includes “animal excreta or other commonly associated wastes of animals.” Definition should include air emissions from confinement buildings.

Response: The suggested amendment exceeds the scope of Executive Order 10.

12. Known Sinkhole. The definition should rely on the applicant’s knowledge only after the applicant has exercised due diligence in determining if a sinkhole exists.

Response: The suggested amendment exceeds the scope of Executive Order 10.

13. Owner. Remove bolded language, add underlined language. “*Owner means* **the** a person who has legal or equitable title to the property where the AFO is located, or the a person who has legal or equitable title to the AFO structures, or a person who has an ownership interest in a partnership or corporation that has legal or equitable title to the property or AFO structures, including ownership defined in an operating agreement of a partnership or corporation. ‘Owner’ does not include a person who has a lease to use the land where the AFO is located or to use the AFO structures. **‘Owner’ includes a person’s ownership interest in a partnership or corporation with legal or equitable title to the property.**”

Response: The suggested language is in the definition, albeit in a different order.

14. Public Use Area. Add recreational trails to the list of public use areas.

Response: The definition of “public use area” in Iowa Code section 459.102(45) requires that the area must be “somewhere that attracts the public to congregate and remain in the area for significant periods of time.” A recreational trail would not meet this requirement.

15. Partially Roofed. The definition should be changed from 10% to 50% must be unroofed and should reference the building/structure, not the operation.

Response: The suggested amendment exceeds the scope of Executive Order 10.

16. Karst. Strike the part of the karst definition that removes an area from karst at 25 feet and make all these changes apply to feedlots

Response: The suggested amendments exceed the scope of Executive Order 10.

B. KARST TERRAIN

1. Require CAFOs/manure storage to have a 25-foot vertical separation distance from karst bedrock. Some comments included a prohibition of manure application on karst.

Response: The suggested amendment exceeds the scope of Executive Order 10.

2. Karst provisions should apply to all formed or unformed manure storage structures at open feedlots.

Response: The suggested amendment exceeds the scope of Executive Order 10.

3. No above ground storage structures regardless of distance to karst.

Response: The suggested amendment exceeds the scope of Executive Order 10.

4. Add the underlined language to 65.7(1) Karst terrain submittal requirements: Prior to beginning construction of a structure identified in the introductory paragraph of this rule, the person planning the construction shall determine whether the proposed structure will be located in potential “karst terrain,” as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed structure is in potential karst terrain. The karst terrain determination shall incorporate site-specific investigation and regional knowledge of sinkholes that have occurred that are not identified on the AFO Siting Atlas.

Response: DNR geologists developed the potential karst layer for the AFO Siting Atlas; the suggested amendment is not needed to prescribe the methods employed by the DNR geologists.

5. In section 65.7(4) Unformed structures, for structures in potential karst require four or six corings at least 25 feet apart, rather than the one required coring (one commenter suggested 4 and another suggested 6).

Response: More than one coring is required, with one of the corings going to a minimum depth of 25 feet below the bottom of the proposed unformed structure. This coring is generally done at the deepest elevation of the bottom of the proposed unformed structure. Any requirement to add to the number of corings would exceed the scope of Executive Order 10.

6. Comment on 65.7(1) regarding the information used to submit a soil report, comment proposed to delete the bolded language and add the underlined language:

b. If the proposed formed manure storage structure is located in potential karst terrain, a PE licensed in Iowa, an NRCS-qualified staff person or a qualified organization shall submit a soil report, based on the results from soil corings, or test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the bottom of the proposed structure to the underlying limestone, dolomite or soluble rock. The karst terrain determination shall incorporate site-specific investigation and regional knowledge of sinkholes that have

occurred that are not identified on the Siting Atlas. A minimum of ~~two~~ six soil corings spaced equally within the structure **or 2 test pits located within five feet of the outside of the structure** are required **if acceptable well log data is not available**. The soil corings shall be taken to a minimum depth of 15 feet below the bottom elevation of the proposed structure or into bedrock, whichever is shallower. Any limestone, dolomite, or soluble bedrock in the corings **or test pits** shall be considered the bedrock surface rather than augur refusal. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials, and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

Response: DNR has the discretion to reject the well log data if the information is not sufficient. The purpose of using the AFO Siting Atlas is to determine the location of potential karst; this provides transparency and consistency to the identification process. The suggested language would not align with the purpose of the AFO Siting Atlas. Additionally, the suggested amendments as a whole exceed the scope of Executive Order 10.

7. 65.7(3) states: If the vertical separation distance between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock is less than 5 feet, the structure shall be designed and sealed by a PE or NRCS qualified staff person who certifies the structural integrity of the structure. A 2-foot-thick layer of compacted clay liner material shall be constructed underneath the floor of the formed manure storage structure.

(1) Comment states that a geosynthetic clay liner (GCL) that meets the NRCS Conservation Practice Standard 521 should be required as well as the clay liner. And the liners must be “directly beneath” the formed structures.

(2) Comment states that the geosynthetic clay liner should not be included in the rule.

Response: (1) The requirement to use a GCL liner would exceed the scope of Executive Order 10. (2) The requirement for a GCL liner was removed from the rule prior to the NOIA’s approval.

8. Comment states that DNR should institute a heightened permeability standard of 1×10^7 cm/sec for liners in sensitive areas.

Response: The suggested amendment exceeds the scope of Executive Order 10.

9. 65.7(4) The rule prohibits unformed manure storage structures to be used by SAFOs in karst terrain. Because the department has, in some cases, interpreted dirt floors inside barns to be manure storage structures, the implication of this requirement is that no livestock in the northeast third of Iowa can be kept without a highly engineered concrete floor or expensive soil corings and examinations. SAFOs are prohibited from constructing a confinement feeding operation structure closer than one thousand feet from a known sinkhole under Iowa Code § 459.310, but the karst restrictions, other than known sinkholes, do not apply to SAFOs under Iowa Code § 459.307. To address this inconsistency, the department should clarify its position that dirt floors

or dirt lots where animals are kept are not considered to be unformed manure storage structures, and remove SAFOs from this paragraph.

Response: Unformed SAFOs or bedded barns located in karst do not have concrete floor requirements. Bedded barns operating as ‘Production Areas’ only are exempt from any karst rule.

C. FLOODPLAINS

1. All construction should be prohibited in floodplains, not just 100 year floodplains of major water sources and the prohibition should apply to all types of structures.

Response: The suggested amendment exceeds the scope of Executive Order 10. Additionally, Iowa Code sections 459.310(2) and 459A.404(3) prohibit the construction of confinement structures and animal truck wash structures in the one hundred year floodplain and Iowa Code section 459.102(42) defines one hundred year floodplain in a major water source. The suggested amendment would require a legislative change.

2. The removal of the reference to alluvial soils should not be removed from the rules.

Response: The alluvial soils coverage was previously used as a screening tool for projects that might be in the 100-year floodplain. With the completion of 100-year floodplain maps, this screening tool is no longer needed. The 100-year floodplain map is available on the AFO siting atlas.

3. Rule 65.9 as drafted, the introductory paragraph to this rule does not accurately reflect the applicability of the flood plain prohibitions. The applicability of these provisions described in the rule are inconsistent with Iowa Code § 459.310(2), which prohibits “confinement feeding operation structures” from being constructed on land in the one-hundred-year floodplain. Iowa Code section 459A.404(3) prohibits an “animal truck wash effluent structure” from being constructed on land in the one-hundred-year floodplain. Contrast these two provisions with the requirement for open feedlots contained in Iowa Code section 459A.302(5): “A settled open feedlot effluent basin or an unformed animal truck wash effluent structure constructed on a floodplain or within a floodway of a river or stream shall comply with rules adopted by the commission.” The current rule 567-65.109(6) reflects current Iowa law that the floodplain rules in chapters 70 to 76 apply to the open feedlot operations. The new proposed rule should not be made more restrictive than current law in accordance with EO-10.

Response: Iowa Code section 459A.302(5) allows DNR to adopt rules for a settled open feedlot effluent basin or an unformed animal truck wash effluent structure on a floodplain. Rule 65.9 is specific to the types of structures that the floodplain regulations apply to.

4. Subrule 65.9(1) This entire paragraph should only apply to confinement feeding operation structures. We suggest changing the heading to “Floodplains – confinement feeding operations.” We also suggest using the term “confinement feeding operation structure” to be consistent with Iowa Code § 459.310(2). These two changes will clarify that it only applies to confinement feeding operations. Otherwise, the subrule as drafted does not reconcile with current

regulations or the Iowa Code. For example, the third sentence prohibits using fill dirt on any portion of the land which, under Iowa Admin. Code r 567-65.7(3)(d), only applies to confinement feeding operations, not open feedlot operations.

Response: Iowa Code section 459A.302(5) allows DNR to adopt rules for a settled open feedlot effluent basin or an unformed animal truck wash effluent structure on a floodplain. Rule 65.9 is specific to the types of structures that the floodplain regulations apply to.

D. COMMON OWNERSHIP

1. Close the LLC loophole once and for all. While the DNR rightfully requires adjacent CAFOs held in a separate LLC to be regulated as one larger confinement if there is common ownership of 10% or more, it doesn't have a legal mechanism to prove ownership. Recommendation to require submission of each LLC's legal Operating Agreement would resolve that issue. Facilities just under the thresholds are able to avoid permitting.

Response: A construction permit application already requires a signature for accuracy/truthfulness. A legal operating agreement does not guarantee any more accurate or truthful information.

E. CONSTRUCTION PERMITTING/CONSTRUCTION DESIGN STATEMENTS

1. 65.103(1)"h" detailing what facilities must obtain a construction permit. For confinement feeding operations that are being repopulating after being discontinued for a period of time. Comment proposes to make that time 12 months rather than the 24 months currently in the rule. Comment also proposes the addition of the following language to this section "All storage areas must be inspected by a licensed professional engineer or a DNR engineer before repopulating the building."

Response: DNR has the authority to require an inspection as part of the permitting process; an additional statement in the rule is not needed.

2. Add the following situation where a facility is required to obtain a construction permit: Purchasing or acquiring an adjacent animal feeding confinement operation if after acquisition the animal unit capacity of the combined operation is 1,000 animal units or more.

Response: This is already an existing requirement in paragraph 65.103(1)"e".

3. Retain the following floodplain language regarding SAFOs in 65.103(8): a. A person shall not construct a confinement feeding operation structure in the one hundred-year floodplain. A person shall not begin construction of a confinement feeding operation structure located on alluvial soil until the department issues a declaratory order pursuant to subrule 65.7(9) that the proposed location is not in the one hundred year floodplain. The AFO Siting Atlas may be a tool used to assist in the one hundred year floodplain and alluvial soil determinations.

b. A person shall not construct a confinement feeding operation structure on a floodplain as provided in rule 567—71.13(455B) until the department issues a floodplain development permit pursuant to 567—Chapters 70 to 76.

c. Confinement feeding operation structures must comply with applicable separation distance requirements in rule 567—65.11(459,459B) and the applicable manure storage structure design requirements in rule 567—65.15(459,459B).

Response: These suggestions are incorporated in the general Flood Plains section in the rules.

4. (1) 65.103(2)“a” regarding operations that are not required to obtain a construction permit. Comment proposes to add the underlined language: a. A construction permit shall not be required for a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a SAFO if the total animal units is 1000 or more. However, this paragraph shall not apply to a SAFO that uses an unformed manure storage structure.

(2) An additional comment proposes the following underlined language: A construction permit shall not be required for a SAFO that uses a formed manure storage structure or for a confinement building that uses a formed manure storage structure in conjunction with a SAFO. However, this paragraph shall not apply to a SAFO that uses an unformed manure storage structure. A SAFO under common ownership or operating in conjunction with another AFO must obtain a construction permit if the total animal unit capacity exceeds 1000.

Response: These comments describe situations where the facility would exceed 1,000 animal units, which is beyond the Small Animal Feeding Operation (SAFO) threshold of 500 animal units or less. This section of the rule only applies to SAFOs.

5. 65.10(3) regarding operations that will not be issued a construction permit. Comment proposes to delete the bolded language and add the underlined language: “The department shall **not** issue a construction permit to expand or modify a confinement feeding operation **for 120 days** after completion of the last construction or modification at the operation if the confinement contains or exceeds 1000 animal units, if a permit was not required for the last construction or modification.”

Response: The intent of this provision is to create a time period between construction sessions so that producers are not adding on to existing projects throughout the course of the construction permit. The suggested amendments would remove the timeframe.

6. Require the following information to be submitted with a construction permit application and construction design statement: For adjacent permitted, unpermitted, and small animal feeding operations where a partnership or corporation is involved, a legally signed Operating Agreement shall be required to validate the percentage of ownership in the partnership or corporation.

Response: The suggested amendments exceed the scope of Executive Order 10. Furthermore, the ownership interests are provided in the construction permit applications.

7. Require the following information to be submitted with a construction permit application and construction design statement regarding the location of the proposed facility. Comment suggests adding the underlined language:

a. The name of the current landowner or the proposed landowner of the land where the confinement feeding operation will be located. For a corporate landowner, provide the names of all parties with an interest or controlling interest in the corporation.

Comment also proposed to add the name of the corporation that owns the livestock (integrator) to the requirements of what needs to be submitted.

Response: The construction permit application includes an Interested Parties form that requires the percentage of ownership for the owners. The suggested amendment to add integrator information exceeds the scope of Executive Order 10.

8. Include the following information with a construction permit: 1) name of the corporation that owns the livestock (integrator); 2) legally signed Operating Agreement for adjacent CAFOS; 3) soil information in alluvial soils and copy of department's floodplain determination; and 4) information if the location is in karst.

Response: The alluvial soils coverage was previously used as a screening tool for projects that might be in the 100-year floodplain. With the completion of 100-year floodplain maps, this screening tool is no longer needed. The 100-year floodplain map is available on the AFO Siting Atlas. Additionally, the AFO siting atlas information will be used to determine floodplain and karst determinations. The information is required for construction permit applications. The other suggested amendments exceed the scope of Executive Order 10.

9. For construction approval letters, 65.104(2)"b" allows for non-substantial revisions to items and maintains the date of construction. Comment requests a definition of "non-substantial" in the rule.

Response: Further change is unnecessary as the definition for "Complete Application" provides the requested clarification.

10. 65.105(7) regarding the county board of supervisors demand for hearing. Comment proposed to allow the county board of supervisors to have 30 days to notify the DNR of its preliminary decision to appeal the permit. The current rules allow for 14 days.

Response: The county has 30 days to furnish its recommendation to the DNR. If the county intended to appeal the permit, the county would likely already know and 14 days is sufficient to submit an intent to appeal.

11: Remove the following provision from the Master Matrix provisions:

"The board shall not use the master matrix to evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if the construction is for expansion of a confinement feeding operation structure constructed prior to April 1, 2002, and, after the expansion of the confinement feeding operation, its animal unit capacity is 1,666 animal units or less. The board may still submit comments regarding the application."

Response: This exemption is in Iowa Code section 459.304(3). The proposed change would require a legislative change.

12. 65.105(3)"b"(3) and 65.106(2) comment proposes to add language to make it clear that when an existing operation is expanded and replaces aging infrastructures with new barns that the DNR will allow the producer to remove the old obsolete structures to improve the aesthetics of the site and remove a rodent and small animal vector.

Response: It is standard practice for the DNR to allow for the removal of old structures when new structures are constructed at the facility and the facility is deemed grandfathered as long as the facility maintains animals at the facility at all times.

13. 65.109(2)"c" requires that the completed confinement feeding operation structure is inspected by a licensed professional engineer. The comment proposed to also required that a DNR AFO engineer conduct an inspection after completion and before commencement of operation.

Response: The suggested amendment exceeds the scope of Executive Order 10.

14. Comment states that the Master Matrix has been removed from the rules and that means that the Master Matrix will not go through the rulemaking process and can be changed with no public input.

Response: The text of the Master Matrix was removed from the rule; however, the document was moved to the incorporated by reference section of the rules: "65.1(2) *Incorporation by reference*. The text of the following incorporated materials is not included in this chapter. The materials are provided at iowadnr.gov/afo/rules. The materials listed below are hereby made a part of this chapter. For material subject to change, only the specific version specified in this subrule is incorporated. Any amendment or revision to a reference document is not incorporated until this subrule has been amended to specify the new version."

The Master Matrix is part of chapter 65 and any change to the Master Matrix will require formal rulemaking, including public input.

15. Comment proposes an additional section regarding facilities who take points for the Master Matrix: 65.106(10) Ongoing master matrix obligations. A confinement that receives points for its score on the master matrix based on operational practices must submit records of compliance with those practices to DNR at least annually.

Response: The suggested amendment exceeds the scope of Executive Order 10.

F. MANURE MANAGEMENT PLANS/NUTRIENT MANAGEMENT PLANS

1. Electronic Manure Management Plan System. Require online submission of MMPs and NMPs and available online with geospatial data. Another comment also stated that electronic MMPs and geospatial data be available through the AFO Siting Atlas.

Response: Although electronic records and online web application enhancements are outside the scope of this rulemaking, the DNR will continue to prioritize and implement the digitizing of public records, including MMPs and NMPs. Multiple facilities are allowed to have the same application fields in the MMPs and NMPs. DNR does not track actual manure application and if DNR does obtain a manure application record, those records are confidential pursuant to Iowa

Code section 459.312(12). A legislative change would be required to make the MMP records public.

2. Make the following requirements for the MMP: 1) The field designation on Page 3 of MMP form must be consistent in all MMPs and identified by the FSA Field Number; 2) Each MMP must be completely analyzed by the DNR to ensure the nitrogen and phosphorus calculations are correct; 3) If a field is used in another MMP, the name of the facility must be included; 4) Database for all MMPs and application fields, application fields with more than one facility must be flagged by the database; 5) If manure is apply to a field that is in multiple MMPs, the producer must notify the DNR of the application and DNR should track the data; 6) All fields should plotted uses geospatial mapping; 7) Manure application and rates should be reported to the database each time manure is applied; and 8) Current electronic system for updated MMPs should be updated to include all information in a hard copy update.

Response: The suggested amendments exceed the scope of Executive Order 10.

3. Regarding the approval or disapproval of all complete MMPs in 65.110(4), the comment proposes to add the following language: “The department shall disapprove all incomplete MMPs after 60 days. No new confinements shall be populated until an MMP is approved.”

Response: The suggested amendment exceeds the scope of Executive Order 10.

4. When substantive changes are made to an NMP or MMP after it has been submitted, the application shall be withdrawn or denied without prejudice. A new NMP or MMP may be initiated that includes the required public notification and comment process.

Response: The suggested amendment exceeds the scope of Executive Order 10.

5. 65.111 regarding the MMP content requirements. The comment proposes to remove the bolded language and add the underlined language: A confinement feeding operation that is required to submit a MMP to the department shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. A confinement feeding operation shall not apply manure in excess of the rates determined in conjunction with the phosphorus index. Information to complete the required calculations shall be obtained from annual samples of manure from the AFO’s confinement pit and documentation of the manure analysis included with the MMP. In the first year of a new AFO, manure samples shall be taken from a AFOs affiliated with the same corporation that owns the hogs and provides the feed within the previous 12-month period. An average of manure taken from CAFOs from the same corporation may be used also if the samples were collected within the previous 12 months. may be obtained from the tables in this chapter, actual testing samples or from other credible sources reviewed and approved by the department including, but not limited to, Iowa State University, the United States Department of Agriculture (USDA), a licensed PE, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Advisors (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

Response: Procedures for estimating manure concentration and manure production are specified in subrule 65.111(3). Table values are needed for sites that have no other estimation of manure concentration or production initially. Requiring annual sampling would be more stringent than existing rules and exceeds the scope of Executive Order 10.

6. Comment proposes the underlined language to the requirements of what an MMP shall include: The name of the owner and the name of the confinement feeding operation, including mailing address and telephone number. If adjacent CAFOs are held in an LLC or partnership, the legally signed Operating Agreement for each LLC or partnership listing each owner and their percent of ownership along with the signature page is required.

Response: This information would be in the construction permit application with the Interested Parties form that requires the percentage of ownership for the owners.

7. Proposes the following section to determine land area required for manure application (65.111): a. The number of acres needed for manure application for each year of the crop schedule shall be determined as required in subrule 65.112(17).

b. Operations evaluated with the master matrix pursuant to 65.106(3) that claim points for additional separation distance for the land application of manure must maintain those distances for each year of the manure MMP. Manure application records documenting those distances were followed must be submitted each year with the MMP.

Response: The MMP content requirements are located in subrule 65.111(2); furthermore DNR reviews application records during site inspections and will verify the distance requirements at that time.

8. For the estimate of manure concentration and production 65.111(3), current rule states that the DNR may require documentation of the manure sampling protocol or take a split sample. The comment proposes to state the DNR shall require documentation and shall take a split sample.

Response: DNR believes that manure samples are typically taken with proper methodology; therefore, there would be little to no environmental benefit to require submission of sampling methodology. In addition, DNR does not have the resources to take split samples of all sites that sample manure.

9. (1) Maximum Return to Nitrogen rate. Change allowable manure application rate to MTRN. This would require MMPs and NMPs to properly determine the manure application rate based on crop needs and account for other fertilizer sources. This change should be included in the final version of the rules. The existing rule allows gross over-application of manure that leads to significant nitrogen and phosphorus pollution. The final rules must adopt these proposed changes to reduce manure and fertilizer contamination in our rivers, streams, and groundwater.

(2) 65.101 proposal to require that maximum manure application rate be determined using the Iowa State University Nitrogen Rate Calculator for the maximum return to nitrogen and include recommended practices.

Response: The suggested amendments exceed the scope of Executive Order 10.

10. For 65.111(12) remove the following section:

e. For an original MMP, previous soil sampling data that does not meet the requirements of subrule 65.111(11) may be used in the phosphorus index if the data is four years old or less. In the case of fields for which soil sampling data is used that does not meet the requirements of subrule 65.111(11), the fields must be soil-sampled according to the requirements of subrule 65.111(11) no more than one year after the original MMP is approved and an updated original MMP shall be submitted with the results of the new samples at the time of the next MMP update.

Response: DNR believes it is reasonable to provide this flexibility given that there are times of the year where soil sampling is not possible.

11. Comment states that the requirement to list the total nitrogen and phosphorus available in the manure from a confinement operation to be determined has been removed and should remain in the rules (was previously in 65.17(5)).

Response: This provision remains in the rule at subrule 65.111(3).

12. Comment states that the requirement to provide an estimate of an annual animal production and manure volume or weight produced has been removed and should remain in the rules (was previously in 65.17(9)).

Response: This provision remains in the rules at subparagraph 65.111(15)"b"(4). The rule requires the following to be included in the MMP: An estimate of the annual animal production and manure volume or weight produced.

13. Comment recommends the following changes to 65.111(3), remove the bolded language and replace it with the underlined language: For new AFOs, actual concentration and production values from the operation or a similar operation. If an actual sample is used to represent the nutrient content of manure, the sample shall be taken in accordance with Iowa State University Extension and Outreach publication AE 3550, "How to Sample Manure for Nutrient Analysis." The department **may shall** require documentation of the manure sampling protocol **or and** take a split sample to verify the nutrient content of the operation's manure. If actual nitrogen and phosphorus are used for concentration in the MMP, actual manure production must also be used. Any sample used to estimate the concentration of manure must be less than **four two** years old. c. After the first year of operation, the manure must be tested at least once per year using protocol in paragraph "b" for total nitrogen and total phosphorus and the MMP must be revised to reflect the results of the actual nutrient concentration.

Response: Owners of new AFOs may not have access to actual concentration and production values from a similar operation. DNR believes that manure samples are typically taken with proper methodology, therefore, there would be little to no environmental benefit to require submission of sampling methodology. In addition, DNR does not have the resources to take split samples of all sites that sample manure. Requiring annual sampling would be more stringent than existing rules and exceeds the scope of Executive Order 10.

14. Comment recommends the following changes to 65.209(8)"a", add the underlined language:

An estimate of the nitrogen and phosphorus concentration of the manure, process wastewater and open feedlot effluent, as shown by laboratory analysis from the facility or from a manure storage structure with design and management similar to the open feedlot's manure storage structure. The NMP must also include and an estimate of the manure, process wastewater, and open feedlot volume or weight produced by the open feedlot operation. After the first year of operation, the manure must be tested at least once per year using protocol in 65.111(3), paragraph "b" for total nitrogen and total phosphorus and the MMP must be revised to reflect the results of the actual nutrient concentration.

Response: Owners of new AFOs may not have access to actual concentration and production values from a similar operation. Requiring annual sampling would be more stringent than existing rules and exceeds the scope of Executive Order 10.

15. Comment recommends the following change to 65.111(13)"c", add the underlined language:

c. Nitrogen-based application rates for corn shall be based on current recommendations from an Iowa-based state university for the maximum return to nitrogen. Nitrogen-based applications rates for other crops shall be based on the optimum crop yields as determined in subrule 65.111(4) and crop nitrogen usage rate factor values in Table 4 or other credible sources. The calculation must use a cost factor of at least 0.10. The calculations of manure applied from the facility must account for fertilizer from all other manure and non-manure sources. Liquid manure applied to land that is currently planted to soybeans or to land where the current crop has been harvested and that will be planted to soybeans the next crop season shall not exceed 100 pounds of available nitrogen per acre. Further, the 100 pounds per acre application limitation in the previous sentence does not apply on or after June 1 of each year; in that event subrule 65.111(4) and Table 4 would apply as provided in the first sentence of this paragraph.

Response: The suggested amendment exceeds the scope of Executive Order 10.

16. 1) Proposed changes to 65.111(15) for NMPs and 65.209(8)"f") for MMPs, remove the bolded language and add the underlined language: shall submit a copy of their site-specific IDALS license, or the IDALS license documentation, and the IDALS product registration approval for any scraped solids or settleable solids that **manure** will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved MMP form for sales of dry manure.

2) Producers should not be able to use IDALS Iowa Code chapter 200 or 200A, as that removes manure from the Chapter 65 oversight.

Response: DNR believes the IDALS license is sufficient for these provisions and further suggestions in comment (1) and (2) exceed the scope of Executive Order 10.

17. Where NRCS or ISU Extension documents are rule referenced or referenced in MMP or NMP instructions and provide a range of values for required criteria, the applicant shall use the median value unless adequate site-specific documentation is provided to justify a different value within the range.

Response: The proposed amendment exceeds the scope of Executive Order 10.

18. When evaluating MMP and NMP inputs, DNR shall do an initial reasonableness assessment. Where inputs do not seem reasonable, DNR shall require additional information justifying the input value.

Response: MMP and NMP inputs have specific requirements in the Iowa Code and administrative rules. DNR reviews MMP and NMP inputs for compliance with code and rule during onsite inspections and desktop reviews.

19. There is a Year 1 loophole regarding previous manure nutrient carryover. In some plans, the carryover into year one is taken as zero for every field, allowing a much larger amount of manure to be spread. The manure history of the field is never presented by the applicant or questioned by the DNR. Applicants must presume manure nutrient carryover into Year One or submit a statement that the field was not manured the previous year.

Response: Site owners are required to take any manure nutrient carryover credit in year 1 of the MMP.

G. MISCELLANEOUS

1. The recommendations previously in the rules regarding land application to snow covered ground should remain in the rule or should become part of the requirements in the rule.

Response: Recommendations are not enforceable in the rule. DNR is reviewing the recommendations and will work with other technical experts. The recommendations will be posted on the DNR's website and will be provided to producers who contact the DNR regarding land application.

2. The Department Evaluation Rule should remain in the rule and should not be removed. DNR should not withdraw the rule allowing DNR to evaluate and stop the proposals that pose the most serious threats to water quality.

Other comment suggested the following language: The department may evaluate any proposed confinement feeding operation or proposed expansion of a confinement feeding operation that requires a construction permit or manure management plan with respect to its potential adverse impacts on natural resources or the environment.

a. In conducting the evaluation, the department shall consider the following factors:

- (1) The likelihood manure will be applied to frozen or snow-covered cropland.
- (2) The proximity of the structures or manure application areas to sensitive areas, including but not limited to publicly owned land, designated areas, trout streams and karst terrain.
- (3) Topography, slope, vegetation, potential means or routes of conveyance of manure spilled or land-applied. This factor includes but is not limited to whether the manure application areas involve cropland with predominant slopes greater than 9 percent without a conservation plan approved by the local soil and water conservation district or its equivalent and whether manure for land application is hauled or otherwise transported more than five miles.
- (4) Whether the operation or manure application area is or will be located in a two-year capture zone for a public water supply.

b. In addition to the requirements in rules 567—65.9(459,459B), 567—65.10(459,459B), 567—65.11(459,459B), 567—65.15(459,459B) and 567—65.17(459,459B), the department may deny a construction permit, disapprove a manure management plan or prohibit construction of the proposed operation at the proposed location if the director determines from the evaluation conducted pursuant to this subrule that the operation would reasonably be expected to result in any of the following impacts:

- (1) Manure from the operation will cause pollution of a water of the state.
- (2) Manure from the operation will cause a violation of state water quality standards.
- (3) An adverse effect on natural resources or the environment will occur in a specific area due to the current concentration of animal feeding operations or the associated manure application areas.

c. The department also may establish permit conditions or require amendments to the manure management plan in addition to the minimum requirements established for such operations, on the location of structures or manure application, or other operational conditions necessary to avoid or minimize the adverse impacts.

d. A construction permit denial or condition, a manure management plan disapproval or required amendment, or a prohibition of construction pursuant to this subrule may be appealed according to the contested case procedures set forth in 561—Chapter 7.

Response: The Administrative Rules Review Committee placed an objection on this rule provision at the time of adoption. Because of the objection and the ramifications of using a rule with an objection, this rule was never used by the DNR.

3. General statement to have stronger Animal Feeding Operation rules

Response: This comment did not provide a specific proposal for consideration.

4. Require cameras in facilities to prevent animal cruelty.

Response: This is outside the scope of the DNR’s rulemaking authority.

5. Make Stricter Master Matrix provisions.

Response: The comment did not provide a specific proposal for consideration.

6. Moratorium on AFOs.

Response: This proposal is not permissible under current state law.

7. Change all “mays” to “shalls or musts”

Response: This proposal is inconsistent with Executive Order 10.

8. Require annual inspections

Response: The DNR does not have the resources to conduct annual inspections of every animal feeding operation. DNR has an established inspection schedule that allows for best use of its resources.

9. Add the underlined language to 65.5 regarding the transfer of legal responsibilities or title: If title or legal responsibility for a permitted AFO or an animal truck wash is transferred, the person to whom title or legal responsibility is transferred shall be subject to all terms and conditions of the construction permit and these rules. The person to whom the construction permit was issued and the person to whom title or legal responsibility is transferred shall notify the department in writing of the transfer of legal responsibility or title of the operation within 30 days of the transfer. The person to whom responsibility is transferred shall publish a public notice containing the information in section 65.106(2)(a) in a newspaper having general circulation in the county. The director shall post notice of the transfer on the department's website. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the construction permit to reflect the transfer of legal responsibility including submitting a master matrix in counties where one is adopted and filing a public notice if the total animal unit exceeds 1000. A person who has been classified as a habitual violator under Iowa Code section 459.604 shall not acquire legal responsibility or a controlling interest to any additional permitted confinement feeding operations for the period that the person is classified as a habitual violator. A person who has an interest in a confinement feeding operation and who is the subject of a pending civil enforcement action shall not acquire legal responsibility or an interest in any additional permitted confinement feeding operations for the period that the enforcement action is pending.

Response: DNR has a public database that provides ownership information regarding a facility. Additionally, the Master Matrix stays with the facility, so if there is a new owner the Master Matrix provisions remain in place.

10. 65.100(1)"b regarding the minimum manure control requirements for an unroofed formed manure structure, require two feet of freeboard, rather than the current one foot requirement.

Response: DNR is not aware of any practical or environmental need to increase the freeboard requirement for unroofed formed manure storage structures.

11. 65.101(2) proposal to remove "good faith estimate" with "documented quantifiable measures recommended by certified hydrologists" in the following statement: In determining appropriate application rates and practices, the person land-applying the manure shall consider the site conditions at the time of application including anticipated precipitation and other weather factors, field residue and tillage, site topography, the existence and depth of known or suspected tile lines in the application field, and crop and soil conditions, including a **good-faith estimate** documented quantifiable measures recommended by certified hydrologists of the available water-holding capacity given precipitation events, the predominant soil types in the application field and planned manure application rate.

Response: This provision is now in subrule 65.101(1) and the requirement for a certified hydrologist to develop the application rates and practices exceeds the scope of Executive Order 10.

12. Add the underlined language to 65.101(2)"c". For manure from an earthen waste slurry storage basin, earthen manure storage basin, or formed manure storage structure, restricted spray irrigation equipment shall not be used unless the manure has been diluted with surface water or groundwater to a ratio of at least 15 parts water to 1 part manure. Samples of the diluted manure should be sent to the State Hygienic Laboratory and documentation of the ratio of water to manure should be kept with all manure application records. Emergency use of spray irrigation equipment without dilution shall be allowed to minimize the impact of a release as approved by the department.

Response: The suggested additional language exceeds the scope of Executive Order 10.

13. Add the following language to 65.101(3)"d" regarding the surface application of manure on frozen or snow-covered ground: For persons who anticipate the need to apply liquid manure on frozen or snow-covered ground, MMPs shall include a description of land identified for the application of liquid manure due to an emergency if allowed pursuant to subrule 65.101(4). The phosphorus index for each potential emergency application field must be calculated, and application rates should be calculated appropriately. Locations of downgradient surface water drain tile intakes within all fields included in the plan should be identified by map or coordinates. Future applications of liquid manure must take the nutrients added during emergencies into consideration.

Response: The majority of this language is already in the rule, see 65.101(3)"d"; the requirement that the plan be identified by map or coordinates exceeds the scope of Executive Order 10.

14. Regarding a waiver for land application in 65.101(2)"e" - clarify what is acceptable to demonstrate "sufficient and proposed alternative information."

Response: This comment seeks legal guidance rather than providing a substantive comment toward the rule.

15. 65.107(4) specifies the separation distance from a designated wetland and provides when the requirement shall not apply. The comment proposes to take away the bolded language of when the requirement shall not apply:

a. The confinement feeding operation structure already exists. **This exemption also applies to additional confinement feeding operation structures constructed at the site of such an existing confinement feeding operation structure after a wetland is included in "Designated Wetlands in Iowa," effective August 23, 2006.**

b. Construction of a confinement feeding operation structure has begun as provided in subrule 65.8(1).

c. **An application for a permit to construct a confinement feeding operation structure has been submitted to the department.**

d. **A manure management plan MMP concerning a proposed confinement feeding operation structure for which a construction permit is not required has been submitted to the department.**

Response: The proposed removal of the provisions exceeds the scope of Executive Order 10.

16. Measurement of separation distances (65.106(9)), for the measure to a public use, the comment proposes to remove the bolded language and add the underlined language:

“Measurement to a public use area shall be to **the property line.** facilities that attract the public to congregate and remain in the area for significant periods of time, not to the property line.”

Response: The suggested amendment exceeds the scope of Executive Order 10.

17. If school or public land grants a waiver from the separation distance, the following language is proposed to 65.108(1)”b”: “The titleholder of a school or public land, such as the school district, county, DNR or other entity, shall execute the waiver after a public notice is filed in a newspaper having general circulation in the county not less than 14 days before the waiver is filed.”

Response: The suggested amendment exceeds the scope of Executive Order 10.

18. (1) 65.4 regarding complaint investigations. The previously deleted language regarding county involvement in the county’s involvement should be placed back into the rule.

(2) Additional comment regarding complaint investigations, proposes to add the following sentence to the end of the section: An investigation is justified if the department could verify facts in the complaint through investigation.

Response: (1) The County Board of Supervisors and County personnel provisions remain in the current rules at 65.4(5) through 65.4(7). (2) Rule 65.4 provides that complaints shall be investigated by the DNR if it is determined that the complaint is legally sufficient and an investigation is justified; thus, the proposed additional language is unnecessary.

19. 65.100(3) regarding minimum manure control requirements. The comment states that the provision allows for unspecified manure control methods if the DNR determines that an adequate level of manure control will result. The comment stated this regulation is too vague and gives the DNR too much discretion.

Response: Subrule 65.100(1) clearly states that the minimum level of control for a confinement feeding operation must be retention of all manure in confinement enclosures between periods of manure application. If any other manure controls were offered as an alternative, the rule is clear as to the requirements of such controls.

20. 65.108(4) states that manure must be removed once a year but only needs to have capacity for 8 months. The comment states that if annual removal is required the basin should be required to have a capacity of at least 12 months.

Response: The previous rule did not have a capacity requirement and this addition of the 8 months requires a minimum capacity and offers the operator the flexibility of when to apply the manure.

21. 65.200 regarding the effluent control requirements at an open feedlot, the comment states that the rule should require that settled open feedlot effluent basins or alternative technologies are the only acceptable manure handling systems for open feedlots.

Response: Subrules 65.200(1-8) lists the requirements for the minimum manure control from an open feedlot; to require only specific types of manure handling systems would exceed the scope of Executive Order 10.

22. Additional suggested underlined language to 65.101(2) regarding land application: For liquid manure applied to land with subsurface drainage, the manure applicator shall sample water quality from any tile monitoring points or outlets on the property downgradient of the manure application. The applicator must submit samples from each monitoring sample to a certified laboratory at least once per year and electronically provide to DNR the results for total phosphorus, nitrate-nitrogen, and E. coli within 30 days after receipt.

Response: The proposed language exceeds the scope of Executive Order 10.

23. Comment proposes to add the following provision:

65.108(15) Groundwater monitoring. The owner of an AFO with an unformed manure storage structure must install and operate a groundwater water pollution monitoring system. Two or more groundwater sampling wells 25 or more feet apart must be installed between 5 feet and 25 feet outside the toe of the berm on the downgradient side, or on opposite sides if the site has no slope. The operator must submit samples from the monitoring device to a certified laboratory at least once per year and electronically provide to DNR the results for total phosphorus, nitrate-nitrogen, and E. coli within 30 days after receipt.

Response: The suggested amendment exceeds the scope of Executive Order 10.

24. Comment proposed to delete the bolded language and add the underlined language from 65.108(6)"b" regarding unformed manure storage structures:

A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed **if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located.** The operator must submit samples from the monitoring device to a certified laboratory at least once per year and electronically provide to DNR the results for total phosphorus, nitrate-nitrogen, and E. coli within 30 days after receipt.

Response: The suggested amendment exceeds the scope of Executive Order 10. However, nearly all newer basins have groundwater lowering tiles with the ability to be monitored if deemed necessary by the DNR.

25. Comment proposes to add modification to 65.202(2) that requires that existing AFOs must apply for expansions and modifications.

Response: The suggested amendment exceeds the scope of Executive Order 10.

26. Comment proposes that the DNR application form for a NPDES permit in 65.202(5) include the following information: "disclosure of ownership interests, including the entities, their locations, their percentage ownership interests, and the beneficial owners of the any entity owners."

Response: The suggested amendment exceeds the scope of Executive Order 10.

27. Comment suggests that the following requirement be added to 65.202(7)"b" regarding inspections at NPDES permitted facilities: "CAFO operators must conduct visual monitoring of downgradient field edges and any other likely discharge locations during an immediately after land application of manure." And if any deficiencies result in a discharge that the operator must collect a sample of the discharge.

Response: The suggested amendment exceeds the scope of Executive Order 10.

28. Remove the rule language that discontinues monitoring requirements at AT facilities.

Response: Monitoring is required for the life of the AT System, the option to reduce monitoring is only an option for certain situations that meet the parameters.

32. Comment proposes to add the underlined language to 65.108(12) for the prohibition of human sanitary waste storage: Human sanitary waste, other than human sanitary waste generated in the animal feeding operation structure from baths, showers, lavatories and clothes washing, shall not be discharged to a manure storage structure or egg washwater storage structure.

Response: Clothes may have pathogens or other emerging contaminants in or on them, such as PFAS, that could end up in the facility's basin. The environmental risks of this proposal are not sufficiently understood to authorize via rule at this time.

III. COMMENTS FROM PUBLIC HEARING

The comments from the public hearing on February 14, 2024 and February 19, 2024 have been transcribed and are included below. A copy of the transcript is available upon request. The names of those who attended the public hearings are located in Appendix B of this document.

1. The Association would like to thank DNR for allowing our organization to participate in the rulemaking process for animal feeding operations rules. We support DNR's actions to maintain existing karst rules regarding vertical separation distance, we believe the current rules effectively serve their intended purpose for operations already in compliance with DNR rules and regulations. There are a few other areas that IPPA would like to see addressed, and you can find those in the written comments. Thank you. (Ben Nuelle, Public Policy Director of the Iowa Pork Producers)

Response: This comment does not require a specific response.

2: We appreciate the opportunity to participate in the rulemaking process and thank the Iowa Department of Natural Resources for its work thus far. With regard to the proposed Chapter 65 rule, we support the current rule for karst, regarding vertical separation distances, and oppose any changes. Furthermore, we support maintaining the current rule that give county supervisors

the ability to determine, annually, whether or not they will adopt a construction evaluation resolution. We believe this is a good practice and provides an opportunity for new supervisors to become familiar with the responsibilities under the master matrix. Additional information will be provided in written comments. Thank you. (Cora Fox, Director of Government Relations for the Iowa Cattleman's Association)

Response: This comment does not require a specific response.

3: I'd like to express my concern for the growing number of AFOs, or confined feeding operations, and the impact that that's having on our waters and our environment. Although it does seem like I should be addressing those who make the rules, and those who weaken the rules, like the Environmental Protection Commission, the Governor, and the State Legislature. If you apply the Governor's cost/benefit analysis, the benefits all seem to go to the AFOs and the costs are passed to all those folks downstream who have to pay to remove excess nitrates from their water systems, pretty much like the Des Moines Water Works and the late Bill Stowe. These costs also effect the non-human elements, the very fragile karst regions, our rivers, our streams, and it's also impacting the dead-zone in the Gulf of Mexico. We need to have stronger regulations, mandatory regulations, not voluntary. And perhaps that would spur some of the innovative measures, that are already in place, that would mitigate some of the pollution we're experiencing in our water. Thank you. (Patricia Fuller)

Response: This comment does not require a specific response.

4: IEC is an alliance of more than 100 member organizations and hundreds of individual members across the state, and our members hike, fish, paddle, swim, and recreate in Iowa's waters. IEC petitioned for rulemaking twice in recent years, on Chapter 65, and commented on prior drafts of these rules. We appreciate DNR's willingness to consider our comments, but have been frustrated by the refusal to adopt common sense revisions to rules that are necessary to protect water quality. I'll highlight a few of those in a moment, and can provide more detailed comments in writing. Iowa faces serious pollution of its drinking water sources, including both surface and groundwater. Most of that pollution comes from agricultural sources, including manure, produced by animal feeding operations. Over the past few decades the livestock industry has transformed through consolidation and we've gained the rapid growth of large scale confinements, and large scale animal feeding operations. We've seen associated increases in water pollution, particularly nitrates, which adds direct cost to the health, finances, and quality of life of everyone downstream. Iowan's depend on the Environmental Protection Commission to protect Iowa's environment, it's right there in their name. The EPC must ensure that manure will not cause surface water or groundwater pollution, and by law DNR must prevent, abate, or control water pollution. Water quality data shows that existing rules have not met those obligations. The proposed rules perpetuate those failures despite opportunities to fulfil the state's duties. First, it appears that the Governor's office preemptively objected to increased protections for karst terrain, where manure can quickly enter groundwater and surface water through porous bedrock and sinkholes. They have more, and more manure storage structures that are getting old and more susceptible to cracks and leakage. News stories regularly report on basins that leak into creeks or other waterbodies, demonstrating the risk for the hundreds of unlined earthen basins in the state. Thousand more AFOs have concrete basins, DNR's own, internal, experts have

concluded that these basins will crack and leak and that more protective rules are needed for karst. We object to the proposed rules because they fail to add those protections that we thought, or any additional protections for karst terrain. Next, the rules both prolong our water quality problems by allowing over application of manure. We all know that there's more manure and fertilizer being applied to farm fields, in many parts of the state, than the crops can use. We see the results in our poor water quality. Why do these rules allow that to continue? Again, DNR must prevent, abate, and control water pollution. The rules need to set application rates that stop sending fertilizer into our creeks, rivers, and streams. Finally, DNR has rejected our request to require manure management plans, or MMPs, to be submitted electronically, and with geo-spatial information. State law encourages electronic submission 'to every extent feasible', we have found through records requests, and our own reviews, that DNR has no way to evaluate whether multiple MMPs rely on the same fields for manure application, unless they page through every nearby MMP that might possible have overlap. We know this because we have asked for those records, we have asked DNR, and we have done those reviews ourselves. I cannot fathom how the department can provide effective oversight when thousands of manure management plans require manual review like that. For proper enforcement DNR must adopt rules that require electronic forms with geo-spatial data. Iowans rely on our water for drinking, for fish, and for many other uses, the EPC and the DNR have legal duties to protect it. I hope you will make the changes we recommend to protect Iowa's water for all Iowans today and in the future. Thank you. (Michael Schmidt, Staff Attorney and Interim Executive Director the Iowa Environmental Council)

Response: Responses to the specific items are provided above.

5: Just briefly, 'according to agency spokeswoman, Tammie Krausman, in communication with the Cedar Rapids Gazette, the DNR considered changes to the vertical separation provision, but the various stakeholders were unable to come to a consensus, within the parameters and timeframes, by executive order 10.' What kind of mumbo-jumbo is that? Who are these stakeholders? Us? The DNR? Or is it the farm bureau? Pork producers, Iowa Cattleman's Association, Iowa Select, meatpackers, Corn & Soybean Association? (Verleen Wobeter)

Response: Responses to the specific items are provided above.

6: I'm an Iowan, and I'm a member of the Iowa CCI. When preparing to come here today I reflected on my family, my two parents, my eight brothers and sisters, eleven of us in total, we all grew up in Iowa, some of us still live here. In the last 25 years we've lost five of them, both of my parents, my eldest brother, and two of my sisters, we lost all five of them to cancer. This is another reason why Iowa's inexplicably, highly elevated cancer rate concerns me deeply, and makes me ask the question, why isn't our water clean? In the final analysis these proposed rules, proposed rule changes are a step backward for the quality of Iowa's water, and the quality of life for all Iowans. Moreover, the proposed rules ignore most of the key issues. The proposed rule, proposed rules fails to close the LLC loophole, allowing vertically integrated operations on multiple sites to skirt around permitting rules, and that ain't right. The proposed rules fail to develop a public, searchable database for manure management plans. (unknown) industrialized

ag operations and making them readily available, online, and accessible to the public, so that the people, because the people have a right to know where the manure's being applied and how much. And the absence of making that, or failing to do, to create that public database, well that ain't right. The proposed rules fail to stop manure application in locations where pollution will end up in the water, and that ain't right. The proposed rules fails to increase the distance between industrialized ag operations and their manure application to at least 25 feet on karst deposits. Again, where pollution will undoubtedly get into water, and that ain't right. The proposed rules ultimately fail to protect the right of all Iowan's to clean water, and instead continues sacrificing our rights at an alter of corporate greed, and guess what, that ain't right. I urge you all to reject the draft rules before you today, and call for re-drafting that incorporates redress of all the aforementioned concerns, and others raised in public comments today and through the official end of the public comment period. Thank you for your time. (John Crabtree)

Response: Responses to the specific items are provided above.

7: I'm a member of Iowa CCI. Well, the drafted rules aren't strong enough. The LLC loophole isn't closed, allowing factory farms to skirt around prevailing laws. There are no public, usable, databases, the karst terrain is unprotected, and allowing factory farms to build where manure will end up in the water, and they aren't strong enough because, in the end, corporate profits are being put before our clean water. The main reason these drafted rules aren't strong enough is because our water is getting dirtier, and dirtier. I came to Iowa in 1988, we went to beaches, rivers, lakes, to recreate, and it was like going to ghost towns half the time, the beaches were deserted and smelly. We were hopeful, that we later found out that the EPA, in Iowa, was making a plan to do something about our polluted waters, and yet here we are today, 2024, 35 plus years later, and our waters are worse. We have more factory farms, and we have less, and less mandatory rules to put these polluters in check. (Kim Hagemann)

Response: This comment does not require a specific response.

8: I just want to share a personal story, to DNR, about the polluted waterways in Marshall County, particularly the Iowa River, which flows fewer than four blocks from where I live. I am a member of CCI, and last year I had an opportunity to tell a personal story to an EPA representative, a regional representative from Kansas City, Kansas. I wanted to impress upon him how polluted our waterways are, in Iowa. So, I took a quart mason jar, went down to the Iowa River, close to where I live, where there is a rather primitive boat ramp, and I thought this would be an easy place to collect my water sample. I was surprised, I assume just a coincidence, but when I parked my vehicle not too far from the boat ramp, there was another vehicle there, and the logo on the door said Aquatic Laboratory Testing, and it was from the University of Iowa. I walked on down to the edge of the river, and I walked up river a short distance, and I was surprised to see a woman in full waders, chest waders, in waist deep water, and a colleague, apparently hers, standing on the riverbank. So, I asked the woman that was standing in the Iowa River, what are you testing for? She looked up at her colleague, she looked back at me, and she said, what we're finding, this is an exact quote, 'is phosphorus, nitrates, and bacteria'. I think it's a given that, in the state of Iowa, for all the corn and soybeans that we raise, we know where the phosphorus and the nitrates come from, but what about the bacteria, that grows all the algae in the Iowa River? I went ahead and I picked up a sample of the Iowa River water, in the mason jar,

and you could see, suspended in the water, very obviously, all this algae and bacteria that probably causes the growth of the algae. It's my understanding that most of the CAFOs in Iowa are under very little regulation, that needs to change. I appreciate DNR giving me this opportunity to tell this personal story, but when we have so few regulations and codes to protect the Iowa waterways, it's like having the fox in charge of the henhouse, self-regulation is not working, and it ain't right. I hope that the DNR will do their best to clean up our polluted waterways. Thank you. (Les Davis)

Response: This comment does not require a specific response.

9: I'm with Iowa CCI, and I go to school at Roosevelt. So, as we've heard today the changes to rules that we're talking about will harm and muddy our water. Water serves as the basis to all life, if our water quality diminishes, so will our quality of life. We've heard that this abuse of our water has led to cancer and other diseases, we should be working to stop this, not actively perpetuating it. As a senior in high school I'm looking for colleges that I want to go to, but my mom's a doctor and she's always talked about how Iowa's dirty water has led to disease, and she's seen it in her patients. I don't want to continue to live in a state with dangerous water, and neither do my peers, so a lot of the schools that I'm looking at are out of state. Show all of us, my generation, my peers, that Iowa is worth fighting and staying for by protecting our water today. Thank you. (Hannah Hayes)

Response: This comment does not require a specific response.

10: I am one of the, roughly, three million stakeholders in this debate about Iowa's poisoned waterways and the direct connection between our livestock practices in this state and the ongoing, increasing contamination and degradation of our waterways. I have here a chart which shows that in 1998, this was produced by the DNR, it's an evaluation DNR has to do every two years, in 1998 we had 250, what they call, euphemistically, impaired waterways, which I call poisoned waterways, and you go to 2022 the number of 250 has grown to 750, in 2022. Now I don't expect, well first of all, when I look at this graph I look at the work of the Environmental Protection Council, and what I see is not an advocacy for clean water, clean air, clean ground, clean land, what I see is advocacy for the profit interests of those corporate stakeholders in this disaster that's unfolding all around us, on an everyday basis. And so, I don't expect the Environmental Protection Council to change their ways and start to enforce the health and welfare of over three million stakeholders in this state, but I sit here to implore you to consider this graph, to consider the fact that this is another year that the DNR has to plot this death plot of our waterways in Iowa. If there's any sanity behind the name of the Environmental Protection Council you can take the study that the DNR is going to give you, at some point during this year, and start advocating for the environment, start advocating for clean water, clean air, and clean soil, those things that give us life. These over three million shareholders, stakeholders in this issue of that which sustains us. Thank you. (Ben Zagerich?)

Response: This comment does not require a specific response.

11: I'm with CCI today. I want to preface that I'm actually from New York City and I've

been living in Iowa for a little over a year now, and I've been welcomed by communities across the state and I've been hearing their stories of an Iowa in the past, where folks recreated and played in the water, it was a mental health and a physical health promoter, being around nature, and I have to say that I cannot relate to that one bit because all I know is the Iowa today, where folks are afraid to even drink the water in their homes, and as a public health professional my goal is to get folks to view environmental protection as health protection for all living beings in Iowa, and we're just not seeing that right now. And so, I just urge the Environmental Protection Commission to take the public's concerns seriously because Iowa ranks poorly in a lot of environmental health, and public health outcomes, nationally. I think this is an arena where we can make a change, we just have to be brave enough to do it, and finally turn anecdotes into action. So, thank you for having us today. (Caroline Powell)

Response: This comment does not require a specific response.

12. First of all, thank you for hosting this meeting and thank you to everybody who's on the meeting and attending, regardless of which side of the issue you're on. I support the comments, written comments and verbal comments that will be made by the Iowa Environmental Council, Mike Schmidt and others, and JFAN for sure, and I will be submitting written comments for the 23rd, but basically what I, and I have submitted comments to you, Kelli, throughout this process, so those will be included in my written comments as well. But the purpose I have is to try to find out, or to impress upon DNR that the reason we have Chapter 65 is to protect the public, and the public trust, from the worst practices of industrialized agriculture. Most of industrialized agriculture is conducted just fine, I don't have issues with it, but there are some times when there are worst practices, or practices that should not occur in certain locations, and that's what I feel Chapter 65 is meant to be the sheriff of. My main concern, right now, is in the implementation of the Chapter 65 manure management plan and nutrient management plans. I think we have fallen short of what the original intent was in terms of how we implement the actual language that's in the code. I think we could do a much better job if we required that the technical service providers, who write the plans, actually had to be certified and indemnified, and had some skin in the game when they write these plans, prior to about 2010 or 2012, when the chapter rules were changed, if you were submitting a plan that had highly erodible land in it then there needed to be a conservation compliance plan that was either certified or met the criteria of NRCS. That stipulation was removed around 2010/2012, somewhere in that timeframe, so before that one could make the argument that the plans were, somewhat conservation oriented, and perhaps trying to find the proper balance between the conservation, and the public's, interest and the requirements, and wishes, of the industries that are covered by Chapter 65. But after that time, it goes pretty much in a downward spiral. Plans now, basically, are written to maximize the amount of manure on the minimum number of acres, that's how they're written, and I've, as you know, I've looked in depth at a number of plans, and I've looked on the surface at a lot more. In northeast Iowa we have outstanding Iowa waters, we have areas of karst that need extra protection, they're really not getting that protection when these plans are created, or reviewed by the DNR staff. Not unless there's a huge outcry, and then sometimes we will have DNR staff engage in much greater detail, when we complain vociferously. That's both a good thing and a bad thing, it's a good thing that they engage when we scream at them, but it's a bad thing that most of the other plans that we don't comment on, or are unable to comment on, don't get the

level of review they probably should, especially if those plans are facilities located in northeast Iowa, where we have karst and outstanding Iowa waters. The other thing I'll be covering in my written comments is what I call 'the reasonableness test'. When someone's filling out an MMP or NMP following the rules as outlined in Chapter 65, they're often times given a range of selection, or a particular parameter they can select within a range of values, and unfortunately, what I'm seeing is, within a range of values, the low value is always selected if that maximizes the amount of manure that can be spread, or the highest value is always selected if that maximizes the amount of manure that can be spread. So, the selections always tend to be 'what selection will allow me to spread the maximum amount of manure on the minimum number of acres' and the selections don't actually reflect reality, which I'm thinking, if we believe we're trying to use Chapter 65 to find a balance between the public's interests and the industry's interests, then I believe there ought to be a much stronger effort to, on the part of plan writers and on the part of DNR staff, to make sure that the entries are reasonable, and not just trying to find, choose this one from category A and that one from category B, specifically because it allows me to spread the most manure on the minimum amount of acres. So, I think I we need to, and that doesn't mean changing any rules, that doesn't require any legislation, that just requires a statement of intent, and a statement that DNR staff will be considering reasonableness. Just to give you two examples, and these are not from Supreme Beef, these are from Fawn Hollow, in the Fawn Hollow plan they were basing manure spreading on 291 bushels per acre, of corn, and this is on land that's all highly erodible, and all has a CSR-2 rating of four, but they're basing manure spreading on 291 bushels per acre, they're probably getting 190 bushels per acre off that ground. So, that's a problem. They were saying, in their plan, they're going to haul their manure, for spreading, 23 miles, well, you know, that's not happening, that never happens, so there wasn't a reasonable test applied to some of these entries, so that's a concern. Also, there are a number of systemic flaws in the plans that we've uncovered, both on TSP entries, systemically making the wrong choices, and DNR's response to those entries, one of the ones that we reviewed was the fact that since 2015, at least in the Manchester section of the state, nobody has been including ephemeral gully erosion in their gross erosion of soil loss, they just ignored it. The TSPs ignored it and DNR staff allowed them to ignore it, so that's a systemic issue, and you'll find a number of those, and the sad part about that systemic issue is that we went to court over that, in part, and the judge agreed with us and he told DNR, no you've got to make sure that they do a proper NRCS evaluation of ephemeral gully erosion as part of total gross erosions, and they went back and they did that. DNR forced them to go back and do that, for that plan, and also for Fawn Hollow, but then the same TSP writer submitted other plans, later that fall, where he totally ignored ephemeral gully erosion, just ignored it, didn't do it, and DNR staff allowed it. So, even though we found a systemic flaw, and the judge agreed with us, DNR didn't change, they did not change their protocols. And I could point out a number of other areas, where the devil is in the details, and we have shown that TSPs and DNR review staff have not always approached those correctly. Once again, it comes back to the issue of a reasonableness test, and the purpose of Chapter 65 is to find a proper balance between the public's need to protect the public trust, and the industry's need to spread manure on crop fields. So, those are the things I'll be putting in my written comments, as I mentioned, I will be including the comments I

previously made on the other drafts, expressing my concern that the director's discretion rule has been removed, expressing my concern that anything related to a 'recommended best practice' has been removed, in these drafts, but, Kelli, these are points I've raised before and I'll raise them again. (Steve Veysey)

Response: Responses to the specific items are provided above.

13. My name is Diane Rosenberg and I'm the Executive Director of Jefferson County Farmers and Neighbors, JFAN, so for 17 years I've worked with communities all across the state facing a proposed CAFO and I've seen how the rules and regulations are failing Iowa and Iowan's, but the DNR has an opportunity to step up and strengthen and better enforce regulations during this Chapter 65 revision. Now CAFO's are consequential operations, they're not like your local bank or corner retailer. A single 2500 head CAFO can generate three quarters of a million gallons of manure a year, and collectively are 24 hogs that generate about 22 billion gallons of manure each year. So, this poses a significant environmental and public health impact across Iowa. Yet the DNR is not adequately treating livestock confinements as consequential operations. We have 751 impaired waterways, drinking nitrate laden water is linked with a variety of cancers, and Iowa ranks second in the nation for cancer, and that number is growing. So, these numbers demonstrate the state has to do much better. There's also enormous financial water quality and public health care costs from CAFO's, direct medical expenses cost Iowan's between 6-27 million in indirect costs, medical costs 35-167 million each year, public water supply treatments cost 165 million, and private well treatment costs between 4-7 million, each year. So, not only is the CAFO industry damaging waterways and public health, it's putting an enormous financial burden on Iowan's, and that's why we need our regulations to be stronger, to protect Iowa's three million citizens, and our 300,000 waterways, yet the DNR is not doing enough to do that. In three sets of comments, since 2022, JFAN has made a total of about 64 different recommendations, separate recommendations, based on our direct experience working with communities, and these would address many of the weaknesses of Chapter 65, so it was very disappointing to see that only four small ones were incorporated, two others were adopted then rescinded, and a whopping 56 were rejected. Most of the recommendations by the Iowa Environmental Council, which JFAN supports, and other environmental organizations, which we also support, were rejected. On the other hand, the industry submitted at least 52 recommendations, in one document that we saw, of which 33 were incorporated into Chapter 65, further weakening its rules and regulations. So, the DNR is allowing the financial interests of the livestock industry to take a precedence over Iowan's at a terrible cost to public health and water quality. So, JFAN urges the DNR to adopt all the recommendations that JFAN and the Iowa Environmental Council will be submitting and to put the wellbeing of Iowan's first, before the financial interests of the multi-national livestock industry, and I would especially like to point out three recommendations in particular, but we stand by all of the ones that we're making. First is to actually close the LLC loophole, which the DNR recognized as an issue during its 2019 rulemaking effort, right now there's no way to legally confirm that common ownership doesn't exist between two adjacent CAFOs held in separate LLCs. The DNR didn't have a solution, but JFAN identified one, by requiring an LLC's operating agreement to be submitted with applications. About a quarter of the CAFOs in Jefferson County, that are adjacent, are

suspected or have been confirmed to be commonly owned. Commonly owned adjacent CAFOs skirt stronger regulations, permits, master matrixes, separation distances required for larger confinements, things like that. Some avoid manure management plans or any separation distances from residences all together, so by requiring an LLC's operating agreement for all sized CAFOs these facilities will be regulated at their correct size. The second is to replace the antiquated and inefficient paper manure management plan system with an online database of manure management plans, and develop a geo-spatial mapping system to plot fields receiving manure. We plot fields in Jefferson County and we see some fields are in as many as five different manure management plans. Now the DNR doesn't have, really, a handle on where the manure is really going with this outdated paper system, and our water quality shows it. The technology exists and the DNR needs to use it. The third focuses on karst terrain, require a 25 foot vertical separation distance from confinement pits and karst bedrock. The DNR originally adopted a modified version of IEC's 25 foot recommendation, scaling it back to five feet, but then reverted back to the original, inadequate, karst language, under what can only be assumed was political pressure. This risks a catastrophic pit failure that could seriously damage groundwater that rural residents depend on for drinking. So, we urge the DNR to treat CAFOs as operations that do have consequences for communities and waterways, and to adopt all of JFANs, and the Iowa Environmental Council's, recommendations to Chapter 65. (Diane Rosenberg)

Response: Responses to the specific items are provided above.

14: This is Larry Stone, I'm from Elkader. Basically, I want to concur with a number of Steve Veysey's points, and Diane's points. The, having the DNR staff actually get the number of people and the time it takes to review the plans, and seriously look at the details of the plans as opposed to coaching them for compliance, I think is the term you like to use, but obviously the DNR probably needs more staff to do that. This I know would take some legislation or some other rules, but having a technical service provider be certified would be a huge step, a lot of states have that, Iowa does not. And I'm especially concerned, as I live in Clayton County, about the karst topography and there needs to be tighter regulations, which as Diane mentioned, where included earlier and now have been rescinded. Karst is a big issue for people in this part of the state. I will be submitting some written comments as well, but I concur with Steve and Diane, thank you. (Larry Stone)

Response: Responses to the specific items are provided above.

15. Hi, my name's Karsen, I am an organizer with Iowa Citizens for Community Improvement. The rules walk back on a couple of things, the LLC loophole isn't closed, and it needs to be. There's no public database for manure management plans, and I would like to see that. In the final draft of the rules karst terrain is unprotected, allowing factory farms to be built where manure will end up in water, and corporate profits are being put before our right to clean water, and that ain't right. Thank you. (Karsen Duve)

Response: Responses to the specific items are provided above.

APPENDIX A:

The following individuals submitted written comments during the public comment period:

NAME	CITY
Abbes, Mary Klauke	Dorchester, Iowa
Acord, Marsha*	Mount Vernon, Iowa
Adams, Bill	Spillville, Iowa
Adams, Wayne	Eldora, Iowa
Ahearn, Sharon	Council Bluffs, Iowa
Ahern, Shaun*	Council Bluffs, Iowa
Alesch, Anne	Des Moines, Iowa
Alexander, Jane	Jefferson, Iowa
Allen, Mary***	Carter Lake, Iowa
Amerman, Mary***	West Des Moines, Iowa
Andersen, Kim*	Brighton, Iowa
Anderson, David	Fort Madison, Iowa
Armetta, Michael	Davenport, Iowa
Arndorfer, Kirstine	Des Moines, Iowa
Arora, Kapil#	Ames, Iowa (Iowa State University)
Avalos, Joy*	Davenport, Iowa
Avenanti, Mary	Waverly, Iowa
Baker, Joyce	Homesyead, Iowa
Ballou, David	Fairfield, Iowa
Barels, Gail	Marion, Iowa
Barker, Michelle	North Liberty, Iowa
Barr, John	Iowa City, Iowa
Bason, K	Saint Charles, Iowa
Bast, Jan*	Goldfield, Iowa
Batton, James*	Dows, Iowa
Beachler, Aleda	West Des Moines, Iowa
Bean, Scott	Bettendorf, Iowa
Benes, Michelle*	Fairfield, Iowa
Bernhardt, Jesse	Peosta, Iowa
Beydler, Katherine*	Iowa City, Iowa
Black, John	Cedar Falls, Iowa
Blaesing, Shawn	Ames, Iowa
Blaesing, Shawn*	Ames, Iowa
Blair, Ron	Fairfield, Iowa

Blandin, Richard	Waterloo, Iowa
Blanshan, Marcia*	Ankeny, Iowa
Blazanin, Jan	Waukee, Iowa
Bolstad, Jim	Des Moines, Iowa
Bornhoff, Teresa	Des Moines, Iowa
Bosma, Norma	Decorah, Iowa
Bosold, Dee	Fairfield, Iowa
Bosold, Patrick	Fairfield, Iowa
Bosold, Patrick	Fairfield, Iowa
Breed, Charles	Fairfield, Iowa
Breed, Suanna	Fairfield, Iowa
Brown, David	Waukee, Iowa
Brown, Kathleen	Drakesville, Iowa
Brown, William	Cedar Falls, Iowa
Bryan, Katie*	Des Moines, Iowa
Burnett, Anne*	Norwalk, Iowa
Burton, Terri	Ankeny, Iowa
Calkins, Laurie	Kalona, Iowa
Canfield, Patrick	Cedar Rapids, Iowa
Carlson, Lisa*	Ankeny, Iowa
Carman, Neil	Fairfield, Iowa
Carsner, Thomas	Iowa City, Iowa
Carter, Mary	
Cavagnaro, David#	
Center, Darrow	Tipton, Iowa
Chapin, Susan	Fairfield, Iowa
Chateauvert, Jocelyn	Mount Union, Iowa
Christensen, Anita	Indianola, Iowa
Clapper, Craig*****	Mediapolis, Iowa
Clark, Jane	Clive, Iowa
Clithero, Bruce*	Shelbyville, Missouri
Colton, Kathy	Marion, Iowa
Connelly, Joe	Dubuque, Iowa
Cook, Vivian*	Ames, Iowa
Cooper, Judith	Des Moines, Iowa
Cooperrider, Ruth	Urbandale, Iowa
Corderman, Jan	Pleasant Hill, Iowa

Cummins, Dan	
Dahlke, Janet	Riceville, Iowa
Dale, Barbara and Jim*****	Decorah, Iowa
Daly, Michael	Lisbon, Iowa
Damstrom, David*	Spencer, Iowa
Daniels, Ben	Fairfield, Iowa
Davi, Stacy**	Postville, Iowa
Davis, Leslie*	Marshalltown, Iowa
DeCook, Mike	Lovilla, Iowa
Dee, Deborah	Coralville, Iowa
Demet, Mikala	North Liberty, Iowa
Deming, Catherine	Iowa City, Iowa
DePree, Dean	George, Iowa
DeSchepper, Tahmi	Fairfield, Iowa
DeVries, Marie*	Mount Vernon, Iowa
DeWolf, Sarah	Ames, Iowa
Dickey, Steve	Sioux City, Iowa
DiMarco, Cynthia*	Boone, Iowa
Dobie, Micheal	Muscatine, Iowa
Donovan, Elaine*****	Cedar Rapids, Iowa
Doty, Robin*	Huxley, Iowa
Doyle, Thomas	
Draznin, Jody	Fairfield, Iowa
Dreaming, Otter	Decorah, Iowa
Drish, Amanda	Des Moines, Iowa
Duckwall, Jane	Ankeny, Iowa
Dudley, Rita*	
Duecker, Gwen	Monticello, Iowa
Duex, Jeffrey	Davenport, Iowa
Dunagan, Mark*	West Des Moines, Iowa
Dursky, Tyler	Cedar Rapids, Iowa
Duve, Karsen*	West Des Moines, Iowa
Earll, Steven*	Central City, Iowa
Eash, David*	Urbandale, Iowa
Eaton, Michelle	Cedar Rapids, Iowa
Eberly, S.S.E.*	Iowa City, Iowa
Eberly, Susan	Iowa City, Iowa
Ehlen, Pam	Marion, Iowa
Eicke, Chant	Iowa City, Iowa

Elbermawy, Lori **	Mason City, Iowa
Elgin, Erin*	Washington, Iowa
Elliot, Lucy	Decorah, Iowa
Elliott, Glendolyn*	Independence, Iowa
Elliott, Sarah	
Ellis, Heidi	Newton, Iowa
Elsbecker, Rose	Marshalltown, Iowa
Erba, Antonio*****	Dubuque, Iowa
Ferguson, Charlene**	Otho, Iowa
Fink, Jim#	Fairbank, Iowa
Fischer, Richard*	Bernard, Iowa
Fishback, Jennifer*	Fairfield, Iowa
Fitzgerald, Linda*	Cedar Falls, Iowa
Follett, Jennifer**	Windsor Heights, Iowa
Folsom, Gina*	Ames, Iowa
Foote, Jon	Waterloo, Iowa
Foster, Gloria*	Fairfield, Iowa
Fox, Bobbie	Cedar Falls, Iowa
Frana, Bruce	Cedar Rapids, Iowa
Frank, Dave**	Ankeny, Iowa
Frederick, Tom	Forest City, Iowa
Frisch, LuAnn*	Coralville, Iowa
Fritchen, Kathy	Fort Dodge, Iowa
Fritz, James*	Decorah, Iowa
Fritzell, Susan	Ames, Iowa
Fritzmeier, Bob	Sioux City, Iowa
Fuller, Patricia*	Council Bluffs, Iowa
Funcke, James	Coralville, Iowa
Gallagher, Steve#	North Liberty, Iowa
Galles, Pamela*	Council Bluffs, Iowa
Gansen, Dan and Laura	Cedar Falls, Iowa
Garrity, Joe	Dubuque, Iowa
George, Sue and Jerry	Lime Springs, Iowa
Gibson, Jody***	Des Moines, Iowa
Gibson, Karla	Marion, Iowa
Gilchrist, J Jay	Iowa City, Iowa
Glaser, Amanda	New Hampton, Iowa

Glavina, Vesna	Fairfield, Iowa
Glaza, Tim*	Des Moines, Iowa
Goff, Linda	Johnston, Iowa
Golle, Caitlin*	Nora Spring, Iowa
Good, Dana	LeClaire, Iowa
Gookin, Beth	
Gosselink, Carol*	Des Moines, Iowa
Gottlob, Dian*	Kalona, Iowa
Grieshop, Annie	Melbourne, Iowa
Griggs, Kevin *	Stratford, Iowa
Groth, Scott	Cedar Rapids, Iowa
Gude, Steve*	Des Moines, Iowa
Gulla, Ronald	Waukon, Iowa
Hacker, Mary	Iowa City, Iowa
Haenel, Edith	Northwood, Iowa
Hagemann, Kim*	Polk City, Iowa
Halverson, Mary	Dubuque, Iowa
Hamil, Jennifer	Boone, Iowa
Hammer, Julie*	Dubuque, Iowa
Hammond, Tim**	Grinnell, Iowa
Hansen, Ric	Alton, Iowa
Hanson, Gerry	Parnell, Iowa
Haralson, Zach	Iowa City, Iowa
Hartman, Sally	Iowa City, Iowa
Hascall, Phillip	Atlantic, Iowa
Hasenwinkle, Lou	Spirit Lake, Iowa
Hawk, Shari*	Ankeny, Iowa
Hearn, Jacquilyn	Batavia, Iowa
Henderson, Michael	Des Moines (Natural Resources Conservation Service)
Henning, Michael	Waterloo, Iowa
Henning, Mike and Barbara	
Herman, Kathleen	Grinnell, Iowa
Hess, Hurd*	Fairfield, Iowa
Hickman, Lauren	West Des Moines, Iowa
Hocker, Victorine	Marengo, Iowa
Holder, Raymond	Cedar Rapids, Iowa
Holder, Raymond*	Cedar Rapids, Iowa
Hollenbeck, Brett	West Des Moines, Iowa

Holmes, Tamara	Coon Rapids, Iowa
Homstad, Carl**	Decorah, Iowa
Hondorf, Avis	Cedar Falls, Iowa
Honigsblum, Alexander	Dubuque, Iowa
Hopkins, William	Indianola, Iowa
Horn, Calvin	Elk Run Heights, Iowa
Horsey, Breanna	
Hosto, Erin	Mount Vernon, Iowa
Howe, Jay*	Greenfield, Iowa
Huang, Winston	West Des Moines, Iowa
Hubbard, Jessica	Davenport, Iowa
Huddleson, Bruce	Fort Madison, Iowa
Huff, Brandon*	Waukee, Iowa
Huff, John	
Hughes, Robert*	West Des Moines, Iowa
Hully, Richard	
Humpal, Greg	Waukee, Iowa
Humphrey, Amy	Polk City, Iowa
Hutson, Janey	Ottumwa, Iowa
Ice, Karla	Cedar Rapids, Iowa
Ihlefeld, Jeanne	Muscatine, Iowa
Immel, Lorna	Knoxville, Iowa
Israels, Travis	Spencer, Iowa
Iverson, Blake*	Des Moines, Iowa
J, Steve*	Bettendorf, Iowa
Jacobsen, Edith*	Decorah, Iowa
James, Marshall*	Des Moines, Iowa
Jarman, Diana	Johnston, Iowa
Jarornik, Michelle	Davenport, Iowa
Jennings, Donna	Osage, Iowa
Jennings, Donna*****	Osage, Iowa
Jensen, Lilly	Decorah, Iowa
Jepsen, Alison	Des Moines, Iowa
Jess, Joan	
Johannsen, Mary*	Davenport, Iowa
Johnson, Craig	West Des Moines, Iowa
Johnson, Emily	Springville, Iowa

Johnson, Gary	Cedar Falls, Iowa
Johnson, Kristin	
Johnson, Theresa**	Bettendorf, Iowa
Jonas, Joseph	Decorah, Iowa
Jones, Judy*	Ames, Iowa
Jones, Zack*	Malvern, Iowa
Kamm, David	Decorah, Iowa
Kamm, David#	Decorah, Iowa
Kamrath, Julie	Spirit Lake, Iowa
Karma, Jennifer	Cedar Rapids, Iowa
Karpen, James*	Fairfield, Iowa
Kashia, Miram	North Liberty, Iowa
Kaufman, Lousie*	Mason City, Iowa
Kealey, Gerald	Iowa City, Iowa
Keen, Wendy*	Iowa City, Iowa
Kittelson-Wittman, Catherine	Clermont, Iowa
Klein, Phil	Coralville, Iowa
Kleineck, Jeff	Cedar Rapids, Iowa
Klosterboer, Laurel	McGregor, Iowa
Knoploh-Odole, Sheila*	Des Moines, Iowa
Kobey, Jonathan	Decorah, Iowa
Koczela, Bob	Fairfield, Iowa
Koffron, Ken	Cedar Rapids, Iowa
Koknen, Renee	Davenport, Iowa
Kolbe, Dave	Marshalltown, Iowa
Koolbeck, Allie*	Iowa City, Iowa
Kotter, Mary Emily	Cedar Rapids, Iowa
Kozar, Amanda	Iowa City, Iowa
Kremer, Cheryl	Elkader, Iowa
Kroneman, Kalleigh	Des Moines, Iowa
Krug, Kathy	West Branch, Iowa
Krystofiak, Thomas	Fairfield, Iowa
Kucera, Candice	Cedar Rapids, Iowa
Kulemin, Lisa	Davenport, Iowa
Kurt, Dena	Hazel Green, Wisconsin
Laird, Victoria	Oskaloosa, Iowa
Landstrom, Sydney	Grinnell, Iowa
Larson, Asher	Cedar Rapids, Iowa
Lassise, Deb*	Mason City, Iowa

Leahy, Nancy	Fairfield, Iowa
Leahy, Roger	Fairfield, Iowa
Leighty, William*	Waterloo, Iowa
Lesko, Paul	Overland Park, Kansas
Levin, Patricia	Iowa City, Iowa
Lilly, Elizabeth	Cedar Rapids, Iowa
Linkenmeyer, Madison	
Linz, Rosina	Bettendorf, Iowa
List, Tom	Fairfield, Iowa
Loggins, Rev. Edward	Waterloo, Iowa
Long, Kay	Mason City, Iowa
Lowman, Terry**	Ames, Iowa
Loy, Gail	Ames, Iowa
Luchman, Joseph*	Pleasant Hill, Iowa
Ludington, Byron	Altoona, Iowa
Luebbert, Amy*	Des Moines, Iowa
Lustig, Susan	Des Moines, Iowa
Lynch, J	Urbandale, Iowa
Lyons, Caryl*	North Liberty, Iowa
M, Renee	Cedar Rapids, Iowa
Maher, Carol	Carroll, Iowa
Maher, Mary	Davenport, Iowa
Mahoney, Collette	Albia, Iowa
Mair, Bhavani	Fairfield, Iowa
Mankel, Michaelyn	Des Moines, Iowa
Manning, Karen	Maquoketa, Iowa
Marlow, Kimberly	North Liberty, Iowa
Martin-Schram, Jim*	Decorah, Iowa
Martinson, P	Decorah, Iowa
Mason, Adam*	Des Moines, Iowa
Mast, Peggy	Kingsley, Iowa
Matt, Shellie	Ankeny, Iowa
Mayo, Mary*	Iowa City, Iowa
McAfee, Eldon	Des Moines, Iowa (Iowa Cattlemen's Association, Iowa Farm Bureau Federation, Iowa Pork Producers Association and North Central Poultry Association)

McAndrew, Matthew	Coralville, Iowa
McCarthy, Emily*	Des Moines, Iowa
McConahay, Karen	Columbus Junction, Iowa
McCormick, Martha	Des Moines, Iowa
McDowell, Megan	Des Moines, Iowa
McDowell, Shelley	Cedar Rapids, Iowa
McKinley, Kathryn	Storm Lake, Iowa
McVey, Randall	Iowa City, Iowa
Melhus, Marc	Moravia, Iowa
Melsha, Ron	Solon, Iowa
Menard, Jennifer	Jefferson, Iowa
Menard, Jeremy*	Council Bluffs, Iowa
Metropole, Ellen	Vedic City, Iowa
Meyer, Ginny#	Lone Tree, Iowa
Mickey, Evalee	North Liberty, Iowa
Miiller, Victor	Des Moines, Iowa
Miller, Denise*	Mason City, Iowa
Miller, Eileen*	Lake City, Iowa
Miller, Janet	Ackley, Iowa
Miller-Bouchet, Ciel	
Miller-Bouchet, Ciel#	
Miner, Rev Dr Curt**	Cedar Rapids, Iowa
Moellers, John	Iowa City, Iowa
Moffet, Sally	Grinnell, Iowa
Mohan, Tom	Cedar Rapids, Iowa
Mohr, Paula	Keosauqua, Iowa
Monk, Steven**	Polk City, Iowa
Moore Kroneman, Kerry	Des Moines, Iowa
Moore, Susan#	Fort Dodge, Iowa
Morgan, Sallie*	Fairfield, Iowa
Mortice, Cherie*	Des Moines, Iowa
Mote, Gale	Mount Vernon, Iowa
Mujica, Bernardo Alayza**	Sioux City, Iowa
Mulvaney, Kyra	Blakesburg, Iowa
Murphy, Mary	Iowa City, Iowa
Murphy, Michael	Iowa City, Iowa
Murrin, K	Des Moines, Iowa
Murrin-von Ebers, David	Des Moines, Iowa
Myatt, Linda	Milton, Iowa

Nelsen Patricia	Iowa City, Iowa
Nelson, Pat*	Duncombe, Iowa
Nelson, Taylor*	Des Moines, Iowa
Nepstad, Greg	Stuart, Iowa
Nichols, Karen	Iowa City, Iowa
Nihsen, Dixie	Shelby, Iowa
Nitzke, Madonna	Sioux City, Iowa
Nocera, Dawna	Fairfield, Iowa
Novak, Andrea	Cedar Rapids, Iowa
Novak, Nikki	Toledo, Iowa
Noyce, Jenny	Iowa City, Iowa
Obr, Brooks	Coralville, Iowa
Oleson, Kenny	
Oliver, June	Fairfield, Iowa
Ortner, Mary*	Holstein, Iowa
Otte, Lyle	
Owen, Milt	St. Ansgar, Iowa
Palmer, Lula	
Palmer, Nicholas**	Ames, Iowa
Pape, Deborah	Saint Lucas, Iowa
Papousek, Chris	Clear Lake, Iowa
Patocka, Roger	Estherville, Iowa
Patton, David	Storm Lake, Iowa
Pearce, Patricia	Garner, Iowa
Pearson, Jo	Marion, Iowa
Pearson, Mel	Fairfield, Iowa
Pence, Kay**	Eldridge, Iowa
Perri, Jean*	Grinnell, Iowa
Peters, Dustin*	West Des Moines, Iowa
Petra, Susie	Ames, Iowa
Pielemeir, John	Fairfield, Iowa
Plakke, Bruce	Cedar Falls, Iowa
Plakke, Linda	
Pleggenkuhle, Lynn*	Hawkeye, Iowa
Ploeg, Russell	Des Moines, Iowa
Poole, Joanne	Fairfield, Iowa
Powell, Theresa*	Menlo, Iowa

Pray, Se	Bondurant, Iowa
Preston, Ryan	Des Moines, Iowa
Pusateri, William	Coralville, Iowa
Quinn, Linda#	
Quinn, Sarah	Fairfield, Iowa
Rathje, Lora	Long Grove, Iowa
Rausch, Al	
Reardon, Thomas*	Council Bluffs, Iowa
Rendon, Julie*	Des Moines, Iowa
Renkoski, Ron	
Richards, Mary	Ames, Iowa
Riggs, Marian	Des Moines, Iowa
Riordan, Mandryx*	Des Moines, Iowa
Robb, Aaeron	Baltimore, Maryland
Rock, Katie	Des Moines, Iowa
Rock, Lisa***	Pella, Iowa
Rogeness, Sheila	Sioux City, Iowa
Rosenberg, Diane	Fairfield, Iowa (Jefferson County Farmers & Neighbors, Inc.)
Ross-Gotta, Cicelia	Iowa City, Iowa
Rovine, Rachel**	Coralville, Iowa
Ruble, Wendy	Des Moines, Iowa
Rummelhart, John	
Rupe, Blake*	Iowa City, Iowa
Russell, Matthew**	Coralville, Iowa
Sadler, Joann	Correctionville, Iowa
Sadowsky, Richard	Urbandale, Iowa
Schaeffer, Michael	Grinnell, Iowa
Schmidt, John	Des Moines, Iowa
Schmidt, Michael	Des Moines, Iowa (Iowa Environmental Council)
Schneider, Stephanie	Windsor Heights, Iowa
Schneidermann, Tanya	Cedar Rapids, Iowa
Schrader, Linda	Newton, Iowa
Schultz, Kevin*	Burlington, Iowa
Schutt, Nick	Alden, Iowa
Scott, Stephen	Asbury, Iowa
Seedorff, Terry	Arlington, Iowa
Sessions, Erik	Decorah, Iowa

Sessions, Robert	Iowa City, Iowa
Seward, Renee	Sergeant Bluff, Iowa
Sheeley, Neal***	Decorah, Iowa
Sheller, Patricia	Bettendorf, Iowa
Shepard, Douglas	Des Moines, Iowa
Shiple, Elly	Marion, Iowa
Shuttelworth, Jane	Iowa City, Iowa
Simmons, Carole	Fairfield, Iowa
Simon, Beth	Mount Vernon, Iowa
Simon, Thomas	Mount Vernon, Iowa
Simonton, Bruce	Des Moines, Iowa
Simonton, Linda	Des Moines, Iowa
Sims, Rich*	Fairfield, Iowa
Sinclair, Elex***	Iowa City, Iowa
Sippy, Jean	Swisher, Iowa
Sirotiak, Arie*****	Ames, Iowa
Skrade, Paul	Fayette, Iowa
Slatin, Patricia*	Council Bluffs, Iowa
Smith, David and Lois	Pella, Iowa
Smith, Jacquelyn*****	West Des Moines, Iowa
Smith, Michael	
Smith-Larson, Clare	Altoona, Iowa
SmolikHagen, David	Waverly, Iowa
Snyder, John	Decorah, Iowa
Soenksen, Mark	DeWitt, Iowa
Southworth, Todd*****	Waterloo, Iowa
Stange, Jack	Solon, Iowa
Staniforth, Art*	Ames, Iowa
Statton, Juliana	West Des Moines, Iowa
Stempke-Durgin, Ryan*	Cedar Rapids, Iowa
Stenzel, Gary	Iowa Falls, Iowa
Stewart, Jim***	Cedar Falls, Iowa
Stoefen, Jerry*	New Liberty, Iowa
Stoefen, Susan*	New Liberty, Iowa
Stolze, Jackie*	Williamsburg, Iowa
Streff, Chad	Dubuque, Iowa
Strepke-Durgin, Ryan*	Cedar Rapids, Iowa

Strub, Gilbey	
Suggett, Carolyn	Pleasantville, Iowa
Swift, Virginia**	Urbandale, Iowa
Talarico, Sister Cathy	Des Moines, Iowa
Taylor, Pam Macke	Des Moines, Iowa
Thomas, Frank	Norwalk, Iowa
Thomas, Sheena*	Des Moines, Iowa
Thomas, Steve	Norwalk, Iowa
Thompson, Bob	Boone, Iowa
Thompson, Nancy	Ottumwa, Iowa
Thys, Glenda	Tipton, Iowa
Thys, Raymond	Marion, Iowa
Tibbs-Cortes, Laura*	Ames, Iowa
Timmer, Mary	Pella, Iowa
Tissue, Diane	Decorah, Iowa
Toering, Stephanie	Cedar Falls, Iowa
Tovar, John*	Cedar Falls, Iowa
Trachsel, Mary	Iowa City, Iowa
Trent, Joyce*	Des Moines, Iowa
Trepka, Jim	Iowa City, Iowa
Turner, Carol	Cedar Rapids, Iowa
Turner, Gail	Polk City, Iowa
Tweedy, Leah	Iowa City, Iowa
Tyx, Carol	Iowa City, Iowa
Unsworth, Nathan	Davenport, Iowa
Valentine, Elin	Fairfield, Iowa
van der Linden, Peter	Decorah, Iowa
Ventura, Bruce	Decorah, Iowa
Vesely, Suzanne Araas*	Fairfield, Iowa
Vestal, Mary Ann	Fairfield, Iowa
Veysey, Steve	Ames, Iowa
Vickstrom, Britt	Davenport, Iowa
Vogelpohl, Sigrid	Fairfield, Iowa
Vorland, Jim	Preston, Iowa
Walters, Sharon	New Vienna, Iowa
Wall, Carolyn	Johnston, Iowa
Wallace, Jackie	Mount Vernon, Iowa
Walshire, Brian*	Rowley, Iowa
Walters, Sharon	New Vienna, Iowa

Walton, Anne	Fairfield, Iowa
Walz, William***	Davenport, Iowa
Watson, Bill	Council Bluffs, Iowa
Weaverling, Kristen	Des Moines, Iowa
Weiss, Beppie	
Weldin, Patsy	Williams, Iowa
Wemer, Kim	Grinnell, Iowa
Wendt, Wanda	Des Moines, Iowa
What, Kath*	Ames, Iowa
Whattoff, Kathie	Ames, Iowa
White, G. Roberta	Dubuque, Iowa
White, Tom	North Liberty, Iowa
Whiteside, Shirley*	Cedar Falls, Iowa
Whiting, Margaret	Waterloo, Iowa
Wieseler, Vicky	
Wilkins, JoAnne	Fairfield, Iowa
Will, Earl	Thompson, Iowa
Willett, Tom	Mason City, Iowa
Williams, Jakob	Belmond, Iowa
Williamson, Tom	Fairfield, Iowa
Wilson, Andrea	Iowa City, Iowa
Winter, Kathleen*	Sibley, Iowa
Winterwood, Charles	Dubuque, Iowa
Wobeter, Gaylen***	Iowa City, Iowa
Wobeter, Tony*	Iowa City, Iowa
Wooton, Judy	Numa, Iowa
Wridler, L. Darrell***	Cedar Rapids, Iowa
Wright, William and Mary Ellen	Fairfield, Iowa
Wyrick, Michael	Cedar Rapids, Iowa
Wyse, Ronald**	Mount Pleasant, Iowa
Young, Paul	Farmersburg, Iowa
Zales, Bill	Westfield, Iowa
Zarwell, Ric	Lansing, Iowa
*Submitted more than one email of the same comment and/or submitted multiple comments. Each * indicates a submittal.	
#Submitted comment outside the public comment period. The commenter's name will be	

included in the list and the comment will be retained, but the comment will not be included in the response.	
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APPENDIX B:

The following individuals attended the public hearings on February 14, 2024 and February 19, 2024:

NAME
Arora, Kapil
Crabtree, John
Davis, Les
Duve, Karsen
Elaine
Espey, Hugh
Fox, Cora
Fuller, Patricia
Gruenhagen, Chris
Hagemann, Kim
Hayes, Hannah
Jordan, Erin
Murill, Kira
Nuelle, Ben
Palmer, Lulu
Powell, Caroline
Rosenberg, Diane
Schmidt, Michael
Shopek, Kay
Stone, Larry
Tebbe, Karla
Veysey, Steve
Wobeter, Verleen
Zacherich, Ben

Chapter 65 - Changes from the Notice of Intended Actions:

1) Properly alphabetized the definitions section. (65.1)

2) Added the term “substantially” to the definition of complete application. (65.1)

“*Complete application*” means an application that is substantially complete and approvable when all necessary questions on the application forms have been completed, the application is signed and all applicable portions of the application, including the application form, required attachments, and application fees, have been submitted.

3) Moved the definition of “New AFO” from the definition section to the body of the rule where the term is used. (65.1 and 65.202(3))

~~*New AFO* means an AFO whose construction was begun after July 22, 1987, or whose operation is resumed after having been discontinued for a period of 24 months or more.~~

65.202(3) *New AFOs*. A person intending to construct a new AFO after July 22, 1987, or resuming a discontinued operation after 24 months or more, upon resumption or completion, will be defined as a CAFO and if the operation discharges pollutants to waters of the United States shall apply for an NPDES permit at least 180 days prior to the date operation of the ~~new~~ animal feeding facility is scheduled. Operation of the facility shall not begin until an NPDES permit has been issued.

4) Removed the term “manure storage structure” from the definition of “Partially Roofed” because “manure storage structure” is already in the definition of “production area” referenced in the definition of “Partially Roofed” (65.1)

“*Partially roofed AFO*” means an AFO in which the animals are confined under a roof and there exists unroofed areas located on the perimeter of the roofed structure, where the animals have unrestricted access at all times. The square footage of the unroofed area shall be at least 10 percent of the square footage of the attached roofed production area ~~or manure storage structure~~. Openings or vents in the roofed portion shall not be included in the 10 percent unroofed calculation.

5) Revised the definition of “Sinkhole” to address DNR technical staff recommendation (65.1)

“*Sinkhole*” means any closed depression that was caused by the dissolution or collapse of subterranean materials in a carbonate formation or in gypsum or rock salt deposits through which water may drain to the local groundwater system. Such depressions may or may not be open to the surface at times. Intermittently, sinkholes may hold water forming a pond.

6) For documents that reference a website, created static lists of the county parks and recreational areas and the parks under federal jurisdiction. (65.1(2)”d” and ”e”)

d. County Parks and Recreation Areas listed in Iowa’s County Conservation System Guide to Outdoor Adventure ~~as shown on [the effective date of these rules];~~ effective date June 19, 2024;

e. Parks in Iowa under the federal jurisdiction of the United States Army Corps of Engineers listed on the United States Army Corps of Engineers’ website ~~as shown on [the effective date of these rules];~~ effective date June 19, 2024;

7) Amended the depth of the coring in potential karst terrain to a minimum depth of 7 feet. (65.7(1)”b”)

65.7(1) Karst terrain submittal requirements. Prior to beginning construction of a structure identified in the introductory paragraph of this rule, the person planning the construction shall determine whether the proposed

structure will be located in potential “karst terrain,” as defined in subrule 65.1(1). The AFO Siting Atlas shall be used to determine if the proposed structure is in potential karst terrain. The results of the karst terrain determination shall be submitted to the department according to the following:

b. If the proposed formed manure storage structure is located in potential karst terrain, a PE licensed in Iowa, an NRCS-qualified staff person or a qualified organization shall submit a soil report, based on the results from soil corings, test pits or acceptable well log data, describing the subsurface materials and vertical separation distance from the bottom of the proposed structure to the underlying limestone, dolomite or soluble rock. A minimum of two soil corings spaced equally within the structure or two test pits located within five feet of the outside of the structure are required if acceptable well log data is not available. The soil corings shall be taken to a minimum depth of ~~15~~ seven feet below the bottom elevation of the proposed structure or into bedrock, whichever is shallower. Any limestone, dolomite, or soluble bedrock in the corings or test pits shall be considered the bedrock surface rather than augur refusal. After the soil exploration is complete, each coring or test pit shall be properly plugged with concrete grout, bentonite or similar materials, and completion of this activity shall be documented in the soil report. If a 25-foot vertical separation distance can be maintained between the bottom of the proposed formed manure storage structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

8) Added a provision for persons in one of the five counties that does not have a FEMA Flood Insurance Rate Map (FIRM) to contest the 100-year floodplain determination for construction. (65.9(1))

65.9(1) Floodplains. A person shall not construct a manure storage structure in the one hundred year floodplain of a major water source. The one hundred year floodplain of major water source designations are included on the AFO Siting Atlas. For construction of facilities located in the following counties that do not have a FEMA Flood Insurance Rate Map (FIRM), Black Hawk, Johnson, Louisa, Winneshiek, and Woodbury, a person shall have the ability to contest the one hundred year floodplain determination by supplying supporting documents to the department for further evaluation. Placing fill material on floodplain land to elevate the land above the one hundred year flood elevation will not be considered as removing the land from the one hundred year floodplain for the purpose of this subrule. Even if the proposed location of the manure storage structure is not on the one hundred year floodplain of a major water source, the site may be on the floodplain of a nonmajor water source and the department may require a floodplain development permit pursuant to 567—Chapters 70 through 76 if the drainage area of the nonmajor water source adjacent to the proposed structure is greater than ten square miles in a rural location or two square miles in an urban location. The proposed construction can be screened through the department’s online floodplain database siting tool.

9) Reverted to the original language to require County Board of Supervisors to sign up annually to score Master Matrix construction permit applications. (65.105(3)”a”)

65.105(3) Master matrix. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the director of the department for filing. Adoption and filing of a construction evaluation resolution authorizes a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix as follows:

a. Enrollment periods.

~~(1) Filed construction evaluation resolutions shall remain in effect until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution. The enrollment period for original construction evaluations shall be January 1—January 31.~~

~~(2) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements in paragraph 65.105(3)”b,” the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.~~

~~—(3) For a county board of supervisors that had not previously submitted a construction evaluation or failed to~~

~~comply with the requirements in paragraph 65.105(3) “b,” the enrollment period for original construction evaluations shall be January 1 – January 31.~~

(1) The county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 of each year to evaluate construction permit applications received by the department between February 1 of that year and January 31 of the following year.

(2) Filed construction evaluation resolutions shall remain in effect until the applicable enrollment period expires or until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, whichever is earlier.

(3) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department or fails to comply with the evaluation requirements in paragraph 65.10(3) “b,” the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.

10) Clarified language regarding Manure Management Plans where a portion of the manure is sold. (65.111(2))

65.111(2) MMP contents. Confinement feeding operations that do not sell manure will not sell all of their manure shall submit the following for that portion of the manure which will not be sold:

11) Amended language for evaluating sheet and rill erosion based on technical advice from NRCS. (65.111(12) “a”)

65.111(12) Use of the phosphorus index. Manure application rates shall be determined in conjunction with the use of the Iowa Phosphorus Index as specified by NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index.

a. The phosphorus index shall be used on each individual field in the MMP. The fields must be contiguous and shall not be divided by a public thoroughfare or a water source as each is defined in this chapter. Factors to be considered when a field is defined may include but are not limited to cropping system, erosion rate, soil phosphorus concentration, nutrient application history, and the presence of site specific soil conservation practices. When sheet and rill erosion is calculated for the phosphorus index, the soil map unit used for the calculation shall be the predominant soil map unit of the steepest slope class that comprises at least ten percent of the total field area. For fields less than 25 acres in size, the predominant soil map unit of the steepest slope class that comprises at least twenty percent of the total field area shall be used. In all MMPs submitted to the department for approval, the soil map unit used for the sheet and rill erosion calculation will be consistent with NRCS Iowa Agronomy Technical Note No. 29: Dominant Critical Area. For the calculations of ephemeral gullies, the provisions of NRCS Iowa Technical Note No. 25 Iowa Phosphorus Index with in-field measurement or estimates from review of at least four aerial photographs shall be used. If using aerial photographs for the evaluation, aerial photography from the spring prior to crop canopy or fall after harvest must be included in the evaluation when available.

12) Clarified language to allow DNR to use the confinement portion of the rules to calculate nitrogen and phosphorus in an NMP. (65.209(8) “a”)

65.209(8) Except as provided in paragraph 65.209(8) “f,” an NMP shall include all of the following:

a. An estimate of the nitrogen and phosphorus concentration of manure, process wastewater and open feedlot effluent and an estimate of the manure, process wastewater, and open feedlot volume or weight produced by the open feedlot operation, in accordance with 65.111(3).

13) Clarified language for IDALS' 200 and 200A allowances in MMPs and NMPs (65.111(15) and 65.209(8)"f")

65.111(15) MMPs for sales of manure. Selling manure means the transfer of ownership of the manure for monetary or other valuable consideration. Selling manure does not include a transaction where the consideration is the value of the manure or where an easement, lease or other agreement granting the right to use the land only for manure application is executed.

a. Confinement feeding operations that will sell dry manure as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or bulk dry manure animal nutrient product regulated by IDALS under Iowa Code chapter 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved MMP form for sales of dry manure. Operations completely covered by this paragraph are not required to meet other MMP requirements in this rule.

65.209(8)"f" Sales of scraped solids or settleable solids licensed by IDALS. Open feedlot operations that will sell scraped solids or settleable solids as a commercial fertilizer or soil conditioner regulated by IDALS under Iowa Code chapter 200 or bulk dry animal nutrient product under Iowa Code chapter 200A shall submit a copy of their site-specific IDALS license or documentation that manure will be sold pursuant to Iowa Code chapter 200 or 200A as regulated by IDALS and may, in lieu of complying with this subrule for that portion of open feedlot effluent, submit to the department a copy of the operation's site-specific IDALS license or documentation for any scraped solids or settleable solids that will be sold pursuant to Iowa Code chapter 200 or 200A, along with the department-approved NMP form for sales of scraped solids or settleable solids.

14) Provided clarifying language to 65.108(6)"b"(2) and 65.108(10) based on staff technical recommendations.

65.108(6)"b"(2) Permanent artificial lowering of groundwater table.

(2) Formed manure storage structures. For a formed manure storage structure or a formed egg washwater storage structure, partially or completely constructed below the normal soil surface, a perimeter tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. The perimeter tile shall include a sample port to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the drainage tile lines if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located or if the perimeter tile is connected to an existing tile. The perimeter tile may be tied into the monitoring port or a sump; however, there shall be permanent automatic pump installed.

65.108(10) Concrete standards.

a. A formed manure storage structure that is constructed of concrete on or after March 24, 2004, and that is part of a confinement feeding operation other than a SAFO shall meet the following minimum design and concrete standards and be designed by either of the two methods listed below:

(1) Design of a formed manure storage structure prepared and sealed by a PE or an NRCS engineer shall be in accordance with the American Concrete Institute (ACI) Building Code ACI 318-19, effective May 3, 2019, ACI 360R-10, effective April 2010, or ACI 350-20, effective November 6, 2020; Portland Cement Association (PCA) publication EB075, effective April 19, 2021, or PCA EB001.16, effective September 2016; or Midwest Plan Service (MWPS) publication MWPS-36 2nd Edition, effective 2005, or MWPS TR-9, effective 1999, and shall also meet the following minimum design and concrete standards.