

Agenda

Environmental Protection Commission

Tuesday, October 11, 2022

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

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

502 East 9th Street, Des Moines, Iowa 50319

DNR 2 North Conf Room

Tuesday, October 11, 2022

10:00 AM – EPC Business Meeting

If you are unable to attend the business meeting, comments may be submitted 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 for the public record.

1	Approval of Agenda	
2	Approval of the Minutes (Packet Page 3)	
3	Monthly Reports (Packet Page 9)	Ed Tormey (Information)
4	Director's Remarks	Kayla Lyon (Information)
5	Notice of Intended Action-567 IAC Chapter 107-Beverage Container Deposits (Packet Page 10)	Amie Davidson (Decision)
6	Notice of Intended Action-Chapters 20, 22, 23, 25 and 28-Air Quality Rules Update (Packet Page 33)	Christine Paulson (Decision)
7	Contract with Seneca Companies/Leslie Nagel, Professional Environmental Services for the Leaking Underground Storage Tank Trust Fund Project (Packet Page 53)	Tammy Vander Bloemen (Decision)
8	Contract with FYRA Engineering, Inc. for High Hazard Dams Risk Review (Packet Page 60)	Jonathan Garton (Decision)
9	Contract Amendment with Gresham Smith, Environmental Management System Program Consulting (Packet Page 62)	Laurie Rasmus (Decision)
10	Referral to the Attorney General-Shane and Michelle Larsen MMP (Packet Page 66)	Kelli Book (Decision)
11	EPC Meeting Dates, Calendar Year 2023 (Packet Page 69)	Alicia Plathe (Decision)
12	General Discussion	
13	Items for Next Month's Meeting	
	<ul style="list-style-type: none">• Tuesday, November 15, 2022, Wallace Building• Tuesday, December 13, 2022, Wallace Building	

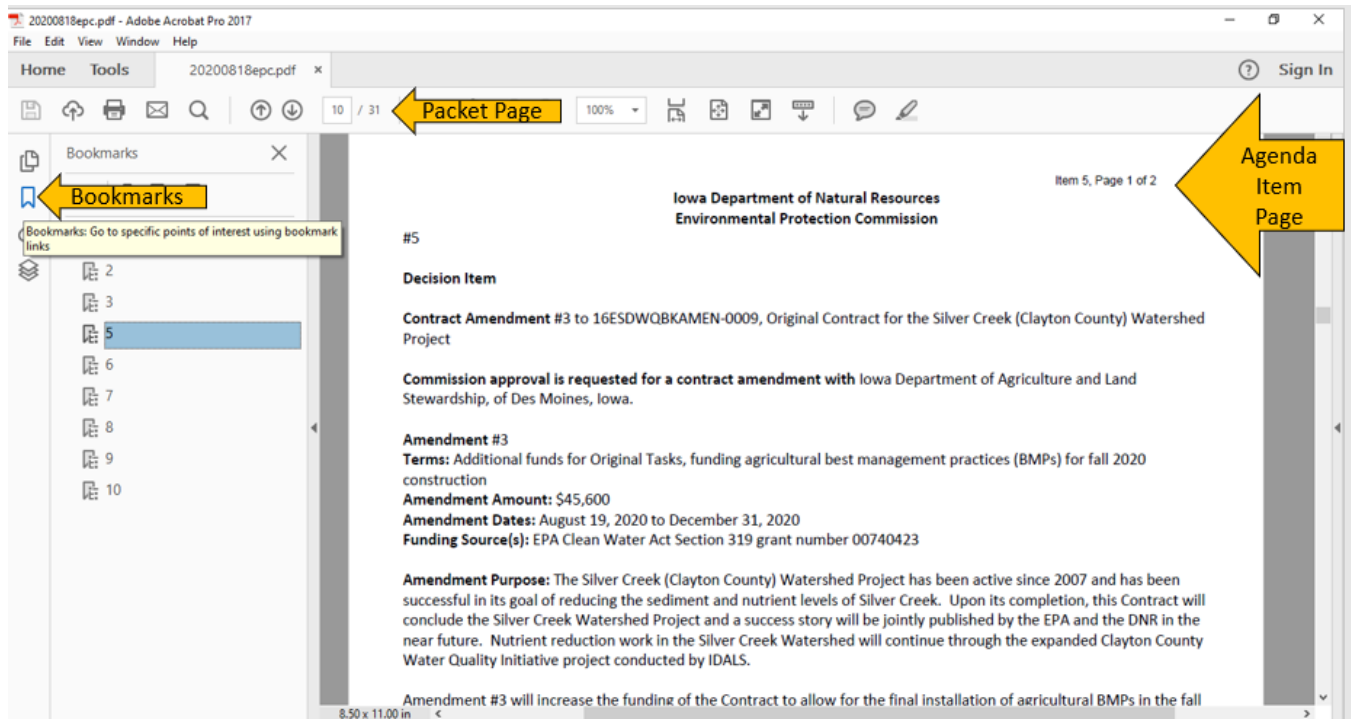
For details on the EPC meeting schedule, visit <http://www.iowadnr.gov/About-DNR/Boards-Commissions>

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

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

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

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



**MINUTES OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING**

September 20, 2022

**Video Teleconference
and
Wallace State Office Building**

Approved by the Commission **TBD**

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

Table of Contents

Call To Order	2
Commissioners Present.....	2
Commissioners Absent.....	2
Approval of Agenda	2
Agenda Approved as Presented	2
Approval of Minutes	2
Approved as Presented	2
Monthly Reports	2
Information.....	2
Director’s Remarks.....	2
EPC Biennial Report	2
Approved as Presented	3
FY 2024 Budget Request	3
Approved as Presented	3
AECOM Technical Services and Atkins North America, Inc, Mapping Services	3
Approved as Presented	3
Stantec Consulting Services, inc, Program Management and Community Engagement and Risk Communication Floodplain Mapping Services.....	3
Approved as Presented	3
Stantec Consulting Services, inc, NFIP Training	3
Approved as Presented	4
Contract with The United States Geological Survey-Surface Wter Flow and Water Quality Concentration Data Collection	4
Approved as Presented	4
Clean Water and Drinking Water State Revolving Loan Fund-FY 2023 Intended Use Plan Second Quarter Update.....	4
Approved as Presented	4
Clean Water and Drinking Water State Revolving Loan Fund-FFY 2022 Bipartisan Infrastructure Law (BIL) General Supplemental Fund Intended Use Plans	4
Approved as Presented	4
Contract Amendment with University of Iowa Office of the State Archaeologist.....	4
Approved as Presented	5
Contract with the Iowa Department of Agriculture and Land Stewardship	5
Approved as Presented	5
General Discussion	5
Adjourn	5
Adjourned.....	5

Meeting Minutes

CALL TO ORDER

The meeting of the Environmental Protection Commission (Commission or EPC) was called to order by Chairperson Harold Hommes at 10:02am on September 20, 2022 via a combination of in-person and video/teleconference attendees. A verbal attendance list was conducted for Commissioners, Department of Natural Resources (DNR) staff, and members of the public.

COMMISSIONERS PRESENT

- Rebecca Dostal
- Stephanie Dykshorn
- Mark Stutsman
- Ralph Lents
- Patricia Foley
- Amy Echard
- Brad Bleam
- Lisa Gochenour
- Harold Hommes

COMMISSIONERS ABSENT

APPROVAL OF AGENDA

Motion was made by Rebecca Dostal to approve the agenda as presented. Seconded by Amy Echard.

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

AGENDA APPROVED AS PRESENTED

APPROVAL OF MINUTES

Motion was made by Patricia Foley to approve the August 16, 2022 EPC minutes as presented. Seconded by Stephanie Dykshorn.

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

APPROVED AS PRESENTED

MONTHLY REPORTS

- Tamara McIntosh recognized Mel Pins of the DNR Land Quality Bureau for being nominated by Iowa Communities and selected to receive the national State Brownfield Leader of the Year award in Oklahoma City, Oklahoma.

INFORMATION

DIRECTOR’S REMARKS

- Director Lyon, Deputy Director Moon and Division Administrator, Ed Tormey, were unable to attend the September EPC meeting due to attending the Fall Environmental Council of the States multi-day conference in Park City, Utah.

EPC BIENNIAL REPORT

Commissioner Stephanie Dykshorn presented the finalized FY 2020-FY 2022 EPC Biennial report due to be submitted to the Governor and the General Assembly. Commissioner Lents thanked Stephanie for all her hard work putting together and finalizing the report on behalf of the EPC Commissioners.

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

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

APPROVED AS PRESENTED

FY 2024 BUDGET REQUEST

Jennifer Nelson presented the DNR’s FY 2024 Budget Request, noting a status quo budget. Jennifer explained the line items within the budget sheet and shared the next steps in the multi-month process before the FY 2024 Budget is finalized.

Public Comments – None

Written Comments – None

Motion was made by Stephanie Dykshorn to approve the item as presented. Seconded by Patricia Foley.

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

APPROVED AS PRESENTED

AECOM TECHNICAL SERVICES AND ATKINS NORTH AMERICA, INC, MAPPING SERVICES

Kathryne Clark presented on two identical contracts with AECOM Technical Services and Atkins North America, Inc. for floodplain mapping services. She reported that the grant funding to be used for both contracts was awarded last week. She explained the importance of Lidar data as the base for the modeling performed in these contracts, provided the history of Lidar data collection in Iowa and responded to questions about future Lidar data updates.

Public Comments – None

Written Comments – None

Motion was made by Ralph Lents to approve the item as presented. Seconded by Stephanie Dykshorn.

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

APPROVED AS PRESENTED

STANTEC CONSULTING SERVICES, INC, PROGRAM MANAGEMENT AND COMMUNITY ENGAGEMENT AND RISK COMMUNICATION FLOODPLAIN MAPPING SERVICES

Kathryne Clark presented a contract with Stantec Consulting Services, Inc, for program management and community engagement and risk communication floodplain mapping services.

Public Comments – None

Written Comments – None

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

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

APPROVED AS PRESENTED

STANTEC CONSULTING SERVICES, INC, NFIP TRAINING

Ken Bouma presented on a contract with Stantec Consulting Services, Inc, for the one-time development of 3 separate course materials to help expand local floodplain-related trainings in Iowa.

Public Comments – None

Written Comments – None

Motion was made by Amy Echard to approve the item as presented. Seconded by Rebecca Dostal.

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

APPROVED AS PRESENTED

CONTRACT WITH THE UNITED STATES GEOLOGICAL SURVEY-SURFACE WATER FLOW AND WATER QUALITY CONCENTRATION DATA COLLECTION

Katie Greenstein presented on a contract with The United States Geological Survey for the collection of surface water flow and water quality concentration data. Katie explained the difference in overall contract dollar amount from the previous contract with USGS.

Public Comments – None

Written Comments – None

Motion was made by Amy Echard to approve the item as presented. Seconded by Stephanie Dykshorn.

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

APPROVED AS PRESENTED

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

Theresa Enright presented the Intended Use Plan for the second quarter FY 23 Clean Water and Drinking Water State Revolving Loan Fund (SRF) monies. She explained the Build America, Buy America (BABA) federal Act and how it affects the FY 23 contracts for the SRF program.

Public Comments – None

Written Comments – None

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

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

APPROVED AS PRESENTED

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND-FFY 2022 BIPARTISAN INFRASTRUCTURE LAW (BIL) GENERAL SUPPLEMENTAL FUND INTENDED USE PLANS

Theresa Enright presented the Intended Use Plan for FFY 2022 BIL Supplemental SRF funds. Theresa made mention that the supplemental funds increased the Clean Water SRF program total for Iowa by 24 million dollars and the Drinking Water SRF program total for Iowa by 28.5 million dollars. These increases are for the current federal fiscal year.

Public Comments – None

Written Comments – None

Motion was made by Mark Stutsman to approve the item as presented. Seconded by Rebecca Dostal.

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

APPROVED AS PRESENTED

CONTRACT AMENDMENT WITH UNIVERSITY OF IOWA OFFICE OF THE STATE ARCHAEOLOGIST

Karrie Darnell presented a request for an amendment to an existing contract with University of Iowa Office of the State Archaeologist. Karrie mentioned that the contract is shared with another DNR Division and the funding increase request was due to an unexpected increase in the number of projects within the Conservation and Recreation Division programs.

Public Comments – None

Written Comments – None

Motion was made by Patricia Foley to approve the item as presented. Seconded by Stephanie Dykshorn.

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

APPROVED AS PRESENTED

CONTRACT WITH THE IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

Eric Wiklund presented on a contract with the Iowa Department of Agriculture and Land Stewardship to add chapters to the Stormwater Manual.

Public Comments – None

Written Comments – None

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

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

APPROVED AS PRESENTED

GENERAL DISCUSSION

- Amie Davidson presented on the updates and changes to the Beverage Container Control laws that were passed during the Spring of 2022.
- Alicia Plathe shared the results of the EPC Commissioner tour survey and provided optional EPC meeting dates for the 2023 calendar year.

ADJOURN

The Chairperson adjourned the Environmental Protection Commission meeting at 12:00 pm on September 20, 2022.

ADJOURNED

**Monthly Waiver Report
September 2022**

Item #	DNR Reviewer	Facility/City	Program	Subject	Decision	Date	Agency
1	Tara Naber	Harlan Municipal Utilities	Wastewater Construction	Request is for transformer mineral oil storage to be located within 200 feet of four new shallow wells for project W2022-0351. Secondary containment will be provided for the mineral oil.	Approved	8.22.22	22cpw197
2	Danjin Zulic	Ajinomoto Health and Nutrition NA, Inc	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	8.22.22	22aqw198
3	Rachel Quill	Moveero Inc. - Estherville	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	8.24.22	22aqw199
4	James Oppelt	Des Moines WRA	Wastewater Construction	The Des Moines WRA is requesting a waiver from complying with Section 12.5.7.4 of the Iowa Wastewater Facilities Design Standards which requires that a manhole be pre-cast or poured in place concrete.	Approved	8.24.22	22cpw200
5	Fields, Manz, Book, and Petitti	Kirchner Farms	Animal Feeding Operation	The applicant requests a waiver from 567 IAC 65.108(2) due to a shallow well located approximately 30 feet from an open cattle feedlot pen. The drainage from the pen is away from the well, there are no well logs, and the well is used for the cattle.	Denied	8.25.22	22cpw201
6	Priyanka Painuly	Advanced Heat Treat Corp - Midport Blvd.	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	8.29.22	22aqw202
7	Martin Jacobs	Tripoli	Wastewater Construction	The City of Tripoli is requesting a variance from the Iowa Wastewater Facilities Design Standards Chapter 12 – Sewer Systems – 12.5.7.1(c) (Manholes) for installing a cleanout in place of a manhole on a gravity sewer line with a length of 262 feet.	Approved	8.31.22	22cpw203
8	John Curtin	Hamlin Feed Mill, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement for equipment used to make animal prepared feeds.	Approved	9.1.22	22aqw204
9	Nate Tatar	Brava Roof Tile	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.2.22	22aqw205
10	Fields, Book, Petitti, and Manz	4G Cattle	Animal Feeding Operation	A deep well is approximately 65 feet from an open cattle feedlot pen. The owner requested variance from the 100' minimum distance due to site concerns.	Approved	9.2.23	22cpw206
11	Chris Roling	Cambrex Charles City, Inc.	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.8.22	22aqw207
12	Lucas Tenborg	Clow Valve Company	Air Quality Construction Permits	Clow has requested to reconfigure and operate duct work and emission collection points associated with the Side Floor Shake Out equipment, EU 011B, within the Iron Sand System, EP 011, Construction Permit # 96-A-561-S3 prior to obtaining a permit.	Approved	9.13.22	22aqw208
13	Rachel Quill	Decorah Wastewater Treatment Plant	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.14.22	22aqw209
14	John Curtin	World Food Processing dba Puris	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement for two storage bins for peas.	Approved	9.15.22	22aqw210
15	Michael Hermsen	Ag Processing, Inc	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.15.23	22aqw211
16	Michael Hermsen	Absolute Energy, LLC	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement.	Approved	9.20.22	22aqw212
17	John Curtin	Grain Processing Corporation	Air Quality Construction Permits	Waiver of Initial Stack Test Requirement for a storage bin for gluten.	Approved	9.22.22	22aqw213

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

ITEM

#5

DECISION

TOPIC

Notice of Intended Action – 567 IAC Chapter 107 – Beverage Container Deposits

The Commission is requested to approve this Notice of Intended Action to amend 567 IAC Chapter 107- Beverage Container Deposits.

This proposed rulemaking aligns the rules with 2022 Iowa Acts, Senate File 2378, which amended Iowa Code Chapter 455C. The proposed amendments also clarify the existing rules and remove outdated provisions. Some of the significant changes include allowing for mobile redemption technologies, increased time period to pay the refund value to customers, an increase in the handling fee paid by distributors to redemption centers from one cent to three cents, simplified process for redemption center approval, and an allowance for dealers to opt out of redemption activities if they meet certain requirements specified in the law.

During the informal rulemaking process comments from 65 public members and stakeholders were received. Many of the comments were not germane to the rulemaking as they would require a legislative change. Comments clarifying the approval process and providing clarity to some definitions were incorporated.

Timeline for rulemaking

- A Proposed Rule will come to the Commission as a Notice of Intended Action for decision, October 11, 2022.
- A public hearing is not yet scheduled but anticipated to be held on November 22, 2022
- Proposed end date for collecting written comments, November 22, 2022
- Estimated responsiveness summary, November 29, 2022
- Estimated return to Commission for proposed Adopted and Filed rule, December 13, 2022

Amie Davidson, Bureau Chief
Land Quality Bureau
Environmental Services Division

September 27, 2022

NOIA Attachments - NOIA and rulemaking package (includes Fiscal/Jobs impact) as submitted to IGOV for preclearance

Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM

Agency:	Environmental Protection Commission (Commission) / Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapter 107
Agency Contact:	Amie Davidson, 515-330-8581; Amie.Davidson@dnr.iowa.gov
Statutory Authority:	Iowa Code section 455C.9; <i>see also</i> 2022 Iowa Acts, Senate File 2378
Preclearance Requested Review Deadline:	October 4, 2022
Purpose of Proposed Rule: Chapter 107 regulates the beverage container redemption system in Iowa. This proposed rulemaking will align the administrative rules with 2022 Iowa Acts, Senate File 2378, which amended Iowa Code Chapter 455C this past legislative session. The proposed amendments also clarify the existing rules and remove outdated provisions.	
Need for Proposed Rule: Changes to the rules are necessary to implement Senate File 2378 enacted the past legislative session. Without the proposed rule changes, the administrative rules would be inconsistent with the underlying statutory authority.	
Summary of Informal Rulemaking Activities related to the Proposed Rule (e.g., stakeholder input): The proposed rule changes were provided to the general public, Petroleum Marketers of Iowa, Iowa Association of Community Providers, Iowa Beverage Association, Iowa Wine Growers Association, Iowa Chapter of the Sierra Club, Urban County Coalition, Iowa League of Women Voters, Cleaner Iowa, Inc., Iowa Environmental Health Association, Iowa County Attorneys Association, Iowa Wholesale Beer Distributors Association, Association of Business and Industry, Doll Distributing, Iowa Recycling Association, Iowa Society of Solid Waste Operations, Iowa Grocery Association, redemption centers, and the Iowa Alcohol and Beverage Division. Approximately 65 comments were received. Of those, the vast majority addressed matters not germane to the rule making.	
The proposed rule was revised from the informal public comment version to address comments provided that were considered germane and relevant, including providing clarity in certain definitions and to clarify the “approved redemption center” application process.	

Administrative Rules JOBS IMPACT STATEMENT

BACKGROUND INFORMATION

Agency:	Environmental Protection Commission (Commission) / Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapter 107
Agency Contact:	Amie Davidson, 515-330-8581; Amie.Davidson@dnr.iowa.gov
Statutory Authority:	Iowa Code section 455C.9
Objective:	Update rules to implement 2022 Iowa Acts, Senate File 2378
Summary:	Chapter 107 regulates the beverage container redemption system in Iowa. This proposed rulemaking will align the administrative rules with recent legislation. The proposed amendments also clarify the existing rules and remove outdated provisions.

JOB IMPACT ANALYSIS

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

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

COST-BENEFIT ANALYSIS

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

There will be no new costs for the regulated community.

FISCAL IMPACT

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

PREAMBLE

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

Administrative Rule Fiscal Impact Statement

Agency: Environmental Protection Commission (Commission) / Department of Natural Resources (Department)		
IAC Citation: 567 IAC Chapter 107		
Agency Contact: Amie Davidson, 515-330-8581; Amie.Davidson@dnr.iowa.gov		
Summary of the Rule: Chapter 107 regulates the beverage container redemption system in Iowa. This proposed rulemaking will align the administrative rules with recent legislation. The proposed amendments also clarify the existing rules and remove outdated provisions.		
<i>Fill in this box if impact meets these criteria:</i>		
<input checked="" type="checkbox"/> -- No Fiscal Impact to the State.		
Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.		
Fiscal Impact cannot be determined.		
Brief Explanation: No fiscal impact to the State is expected from this proposed rule change. Existing staff will implement the new regulatory scheme.		
Assumptions:		
<i>Describe how estimates were derived:</i>		
<i>Estimated Impact to the State by Fiscal Year</i>		
	Year 1 (FY23)	Year 2 (FY24)
Revenue by Each Source:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0
TOTAL REVENUE	\$0	\$0
Expenditures:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0
NET IMPACT	\$0	\$0
<input checked="" type="checkbox"/> -- This rule is required by State law or Federal mandate. <i>Please identify the state or federal law:</i> 2022 Iowa Acts, Senate File 2378 made significant changes to Iowa Code Chapter 455C. This rulemaking is necessary to align the rules with the new legislation.		
Funding has been provided for the rule change. <i>Please identify the amount provided and the funding source:</i>		
<input checked="" type="checkbox"/> --Funding has not been provided for the rule. <i>Please explain how the agency will pay for the rule change:</i> There will be no additional costs due to the rule change.		
Fiscal impact to persons affected by the rule: None		
Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): None		

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

The Environmental Protection Commission (Commission) hereby proposes to amend Chapter 107, “Beverage Container Deposits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 455C.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code Chapter 455C, as amended by 2022 Iowa Acts, Senate File 2378.

Purpose and Summary

Chapter 107 regulates the beverage container redemption system in Iowa. This rule making is necessary to align Chapter 107 with Iowa Code Chapter 455C, as amended by recent legislation (2022 Iowa Acts, Senate File 2378). The proposed amendments rescind or amend provisions that are now inconsistent with the amended statute. The proposed amendments also clarify the existing rules and remove outdated provisions.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on November 22, 2022. Comments should be directed to:

Amie Davidson
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, IA 50319
Email: bottlebill@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held via conference call as follows. Persons who wish to attend the conference call should contact Amie Davidson via email at bottlebill@dnr.iowa.gov. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Ms. Davidson prior to the hearing to facilitate an orderly hearing.

November 22, 2022
Noon to 1 p.m.

Video/conference call

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

ITEM 1. Rescind and reserve rule **567—107.1(455C)**.

ITEM 2. Amend rule **567—107.2(455C)**, introductory paragraph, as follows:

567—107.2(455C) Definitions. ~~As used in this chapter:~~ For the purpose of this chapter, the following terms shall have the meaning indicated in this rule. The definitions set out in Iowa Code section 455C.1 shall be considered to be incorporated verbatim in this rule.

ITEM 3. Rescind the definitions of “Beverage,” “Beverage container,” “Commission,” “Consumer,” “Dealer,” “Dealer agent,” “Department,” “Director,” “Distributor,” “Exempt dealer,” “Manufacturer,” “Redemption center,” “Redemption center for a dealer,” and “Registered redemption center,” in rule **567—107.2(455C)**.

ITEM 4. Adopt the following **new** definitions of “Distributor redemption center” and “Handling fee or fee” in rule **567—107.2(455C)**:

“Distributor redemption center” means a redemption center that satisfies the requirements

of Iowa Code section 455C.14.

“Handling fee” or *“fee”* means the amount reimbursed by a distributor, in addition to the return of the 5-cent refund value, in an amount that is one cent per beverage container for containers accepted from a dealer agent and three cents per beverage container accepted from a participating dealer or redemption center.

Item 5. Amend rule **567—107.2(455C)**, definitions of “Exempt beverage container” and “Unapproved redemption center” as follows:

“Exempt beverage container” means a beverage container that is not marked with the words “Iowa Refund 5¢” because it is a refillable glass beverage container having a brand name permanently marked on it and having a refund value of 5 or more cents or because it is a refillable metal or plastic beverage container that has been exempted, in accordance with the procedure of 107.3(7), from the requirement of having the refund value marked on the container. An exempt beverage container is exempt from having the words “Iowa Refund 5¢” indicated on the container, but is not necessarily exempt from the minimum deposit and redemption requirements of this chapter.

“Unapproved redemption center” means a redemption center that is not an approved redemption center ~~or a registered redemption center.~~

ITEM 6. Amend subrule 107.3(1) as follows:

107.3(1) All beer, wine, alcoholic liquor, mineral water, soda water and similar carbonated soft drink containers (other than exempt containers) sold or offered for sale in Iowa by a dealer shall have the words “Iowa Refund 5¢” or “IA 5¢” clearly, indelibly and legibly indicated on the

container. ~~If the refund value is more than 5 cents, the greater value may be indicated, e.g., “Iowa Refund 10¢” or “IA 10¢.”~~ Any abbreviation of the words “Iowa Refund” other than as provided in this subrule shall be submitted to and approved by the department.

ITEM 7. Amend subrule 107.3(5) as follows:

107.3(5) The words “Iowa Refund 5¢” or “IA 5¢” shall be on the top or on the cylindrical portion of a metal beverage container. The words “Iowa Refund 5¢” or “IA 5¢” shall be on the conical portion of a glass or plastic beverage container so that the words are visible from above or shall be on the product label. The placement of refund information solely on the bottom of the beverage container is prohibited.

ITEM 8. Amend subrule 107.3(7), introductory paragraph, as follows:

107.3(7) An application for exemption from the requirement of having the words “Iowa Refund 5¢” or “IA 5¢” indicated on the container shall be submitted to the department and shall ~~be on Form LQ 37 or on 8½” × 11” paper and~~ shall contain:

ITEM 9. Amend subrule 107.3(8) as follows:

107.3(8) An example of the container for which the exemption is being requested shall be sent to the department along with the application required in 107.3(7). The example may consist of photographic images or empty containers. Examples submitted to the department must not contain any liquid.

ITEM 10. Adopt the following **new** subrule 107.3(10):

107.3(10) Automatic Exemption. Beverage containers sold in Iowa containing alcoholic liquor as defined in Iowa Code section 123.3, subsection 5, where the total capacity of the container is not more than 50 milliliters, are automatically exempted from the labeling requirement of this subrule 107.3. However, such beverage containers remain subject to the remainder of this Chapter 567—107.

ITEM 11. Amend rule 567—107.4(455C), introductory paragraph, as follows:

567—107.4(455C) Redemption centers. The Act provides for both approved and unapproved redemption centers. Both approved and unapproved redemption centers redeem empty beverage containers and pay the refund value to consumers. Only approved redemption centers can satisfy the requirements of Iowa Code sections 455C.4(2)“a”(2) and 455C.4(2)“a”(3), and 2022 Iowa Acts, SF 2378, Sec. 19.1(a) or (b). Additionally, the Act recognizes “a redemption center for a dealer.” Unapproved redemption centers in existence on May 22, 2002, and served by distributors on a voluntary basis may formalize the status quo by registering with the department pursuant to 107.4(4).—Additionally, only approved redemption centers will be listed on the department’s electronic database pursuant to Iowa Code section 455C.4(2)“c.”

ITEM 12. Amend subrules 107.4(1) and 107.4(2) as follows:

107.4(1) Approved redemption centers.

a. Any person may file with the department an application for approval of a redemption center.

b. An annual application for approval of a redemption center shall be submitted ~~on Form LQ38 or on 8½" × 11" paper and shall contain the following information:~~ to the department

electronically.

(1) Initial Application. All redemption centers in existence prior to January 1, 2023 that wish to be considered “approved” under this chapter must apply for approval pursuant to the requirements of this subsection by January 31, 2023. This will ensure that the approved redemption center list published by the department is accurate and includes existing redemption centers. All other redemption centers that wish to be considered “approved” under this chapter (i.e. “new” redemption centers established any time after January 1, 2023) should file their application within 30 days of starting their business.

(2) Annual Renewals. All redemption centers should file their annual renewal application by January 31 of each subsequent year to allow the department to update its approved redemption center list in a timely manner.

(3) Application Requirements. A redemption center must submit a separate application for each facility, including if a redemption center is operating a “mobile redemption system” for a dealer or dealers. The information on the application will be included in an electronic database for consumers to locate the nearest approved redemption center, as such, applications must be resubmitted annually to ensure that contact information remains accurate. There is no fee to submit the application. The application shall include the following information:

~~(1)~~(i) Name, address and telephone number of the redemption center;

~~(2)~~(ii) Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center;

~~(3)~~(iii) ~~Indication that the redemption center will accept~~A statement that the operator of the redemption center understands it must accept all redeemable containers, except for those containers exempted in 567-107.13. kinds, sizes, and brand names of beverage containers sold by

~~the dealers served by the redemption center;~~

~~(iv) Whether the redemption center will be operating a “mobile redemption system” and the location where the system will be operated.~~

~~(4) Names and addresses of the dealers to be served by the redemption center and the written consent of those dealers to be served by the redemption center;~~

~~(5) Distance, in blocks or other appropriate measure, from the redemption center to each dealer to be served by the redemption center;~~

~~(6) Names and addresses of the distributors whose beverage containers will be redeemed;~~

~~(7) Hours during which the redemption center is to be open;~~

~~(8) Whether metal, glass or plastic beverage containers will be crushed or broken and, if so, the written consent of the distributor or manufacturer to the crushing or breaking;~~

~~(9) Reasons why the redemption center and the dealers to be served by it believe that the redemption center will provide a convenient service to consumers.~~

~~c. The department will issue an electronic order of approval once a complete application is received. A redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer’s customers. The department order that approves the redemption center shall name the dealers to be served by the redemption center.~~

~~d. An approved redemption center may file with the department a supplemental application to serve additional dealers. The supplemental application shall be in the form and contain the information required by paragraph “b.” If the department finds that the redemption center will provide a convenient service to the customers of those additional dealers which the redemption center proposes to serve, the department shall supplement its order approving the redemption~~

~~center to name the additional dealers.~~

~~e. A dealer named in the department order that approves a redemption center or named in a supplemental order shall be an exempt dealer.~~

~~f. d. The department may at any time rescind the order approving a redemption center or terminate the exemption of a dealer if the department determines, after notice and hearing, that the redemption center is in violation of the Act or this chapter or that the redemption center is no longer meeting the above criteria or is no longer providing a convenient service to a dealer's customers.~~

~~g. A dealer may withdraw its consent to be served by a redemption center which is approved as a redemption center for the dealer by filing with the department written notice of withdrawal of consent. A dealer which has withdrawn its consent is no longer an exempt dealer, and the approval of its redemption center as a redemption center for the dealer is thereby terminated.~~

~~h.e. An approved redemption center shall accept from consumers and shall pay the refund value for all beverage containers that bear an Iowa refund value and those containers exempted from the labeling requirement pursuant to 567—107.3(10). and are of the kinds, sizes and brand names sold by the dealers for which it is an approved redemption center.~~

~~i. An approved redemption center shall be in operation and open to the public for redemption of beverage containers at least 20 hours per week, 4 hours of which shall be between the hours of 6 p.m. and 10 p.m. or on Saturday or Sunday, or a combination thereof.~~

~~j.f. When an approved redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation. As of the final date of operation, the redemption center's approval as a redemption center shall be terminated and a dealer it was approved to serve shall no longer be an exempt dealer. An approved redemption center~~

must notify the department and any dealers with which it has agreements 30 days prior to the redemption center's closing.

107.4(2) Unapproved redemption centers. Nothing in the Act or this chapter prevents a person from establishing a redemption center that has not been approved by, ~~certified by, or registered with~~ the department. These facilities are not “approved redemption centers” as required by some sections of the Act. ~~Before commencing operations, unapproved redemption centers shall provide the following to the department:~~

- ~~—— a. Name, address and telephone number of the redemption center;~~
- ~~—— b. Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center; and~~
- ~~—— c. Operating hours of the redemption center.~~

~~When the redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation.~~

ITEM 13. Rescind subrule 107.4(3) and adopt the following **new** subrule in lieu thereof:

107.4(3) Distributor redemption centers.

a. Each beer distributor selling nonrefillable metal beverage containers in this state shall provide individually or collectively by contract or agreement with a dealer, person operating a redemption center or another person, at least one facility in the county seat of each county where refused empty nonrefillable metal beverage containers, refused pursuant to 567-107.13, having a readable refund value indication as required by this chapter may be accepted and redeemed. In cities having a population of twenty-five thousand or more, the number of the facilities provided shall be one for each twenty-five thousand population or a fractional part of that population.

b. Distributor redemption centers may be either “approved” or “unapproved.” To be “approved”, the facility must submit an application pursuant to 567-107.4(1), which includes the requirement to accept more than just metal beverage containers.

ITEM 14. Rescind subrule **107.4(4)**.

ITEM 15. Rescind subrule **107.4(5)**.

ITEM 16. Rescind subrule **107.4(6)**.

ITEM 17. Rescind and reserve rule **567—107.5(455C)**.

ITEM 18. Rescind and reserve rule **567—107.6(455C)**.

ITEM 19. Rescind and reserve rule **567—107.7(455C)**.

ITEM 20. Amend rule 567—107.8(455C) as follows:

567—107.8(455C) ~~Interpretive rules.~~ Miscellaneous requirements.

107.8(1) Beverage containers sold on interstate carriers, such as trains, planes or buses that travel through Iowa. ~~It is common practice for interstate carriers to provide or sell soft drinks, beer, wine, or alcoholic liquor to passengers for consumption on the conveyance. Such containers are not a litter problem and their return would be impractical. Since statutes should be construed to avoid a strained or impractical result, the commission believes that control of the beverage~~

containers “sold” on interstate carriers is beyond the objectives sought to be obtained by the Act and that these containers are not subject to the deposit and labeling requirements of the Act.

~~107.8(2) Beverage containers must be reasonably intact. In order to be redeemed, an empty beverage container must be returned reasonably intact. For a refillable beverage container, the container must hold liquid, be able to be resealed and be in its original shape. A nonrefillable glass container may be chipped, but it may not have the bottom broken out or the neck broken off. A nonrefillable metal container may be dented or partially crushed, but may not be crushed flat. A returned beverage container should be able to stand on its own base.~~

~~107.8(3) Vending machines.~~

~~a. When a beverage container is dispensed from a vending machine in exchange for money, there is presumed to be a sale of a beverage in a beverage container to a consumer. Therefore some person must be the “dealer” who is responsible for collecting the deposit at the time of sale and for refunding the deposit when the empty beverage container is returned. Because of the variety of contractual relationships surrounding operation of a vending machine, the person who is the “dealer” might be the owner of the vending machine, the lessee of the vending machine, the owner of the premises on which the vending machine is located, or the person who stocks the vending machine. It is incumbent upon the parties involved in the operation of a vending machine to determine the person who is the “dealer” and to indicate prominently on the vending machine the name, location and normal operating hours of the dealer (or an approved redemption center) if the dealer does not have personnel on its premises.~~

~~b. If the vending machine is located on premises where personnel of the dealer are not normally working, there is no obligation to provide personnel to redeem beverage containers at the site of the vending machine. However, the “dealer” must provide for redemption of beverage~~

~~containers at the dealer's usual working place.~~

~~107.8(42) Transfer tanks, premix tanks and beer kegs. Because transfer tanks, premix tanks and beer kegs (half kegs, quarter kegs or pony kegs) are refillable, are returned to distributors and are not a litter problem, the commission believes that control of these containers is beyond the objectives sought to be obtained by the Act and that these containers are not subject to the deposit and labeling requirements of the Act.~~

~~107.8(53) Return limits. Dealers may limit the number of containers returned by an individual to 120 containers in a 24-hour period. Redemption centers may limit the number of containers returned by an individual to 500 containers in a 24-hour period.~~

~~107.8(6) Hours of returns for dealers. A dealer, unless exempted pursuant to 107.4(4), must accept returns, at a minimum, from 7 a.m. to 10 p.m. unless the dealer's operating hours are shorter, in which case returns shall be limited to the dealer's hours of operation. If a dealer chooses to limit the hours of returns, the dealer must post a sign stating the hours during which beverage containers are accepted for return.~~

~~107.8(7) A dealer shall provide to the department upon request the name, telephone number and address of the distributor of any or all beverages sold by the dealer.~~

ITEM 21. Amend rule 567—107.9(455C) as follows:

567—107.9(455C) Pickup and acceptance of redeemed containers by distributor.

107.9(1) *Pickup and acceptance from participating dealers.* A distributor shall accept and pick up from a participating dealer served by the distributor, ~~other than an exempt dealer,~~ all empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers at least weekly,

or when the distributor delivers the beverage product to the dealer if deliveries are less frequent than weekly, unless otherwise agreed to by both the distributor and the dealer.

107.9(2) *Pickup and acceptance from approved redemption centers* ~~and redemption centers certified as a redemption center for a dealer.~~ A distributor shall accept and pick up from an approved redemption center, ~~for a dealer served by the distributor and from a redemption center certified as a redemption center for a dealer served by the distributor from and~~ pay the refund value ~~and handling fee~~ for all empty beverage containers ~~picked up~~ that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers at least weekly, ~~or when the distributor delivers the beverage product to the dealer for which the redemption center is certified as a redemption center if deliveries are less frequent,~~ unless otherwise agreed to by both the distributor and the approved redemption center. ~~or the certified redemption center for a dealer, as the case may be.~~

107.9(3) *Pickup from registered redemption centers.* A distributor shall pick up from a ~~registered redemption center at the physical address specified in the redemption center's application, or at a new location approved by the department pursuant to 107.4(4),~~ all empty beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor. The distributor shall pick up the empty beverage containers according to the following schedule:

—— *a.* —— At least as frequently as the distributor picks up empty beverage containers from a dealer served by the distributor and located within three road miles of the registered redemption center, but not less frequently than once every ten calendar days;

—— *b.* —— At least once every ten calendar days for a registered redemption center located more than three road miles from the closest dealer served by the distributor; or

~~_____c._____ As agreed to by both the distributor and the registered redemption center.~~

~~_____107.9(4) *Acceptance of redeemed containers from redemption centers.* A distributor shall accept delivery of empty beverage containers from and pay the refund value and handling fee to a redemption center located within the distributor's geographic service area provided that the containers bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor.~~

107.9(53) *Acceptance of redeemed containers from dealer agents.* A distributor shall accept delivery of empty beverage containers from and pay the refund value and handling fee to a dealer agent provided that the containers were picked up by the dealer agent within the distributor's geographic service area and that they bear an Iowa refund value and are of the kinds, sizes and brand names sold by the distributor.

107.9(64) *Notification of frequency.* A distributor shall notify each participating dealer served by the distributor of the intended frequency of pickup. A distributor shall notify each redemption center from which the distributor is required to pick up containers of the intended frequency of pickup.

107.9(75) *Partial pickup.* A distributor which picks up containers more often than the required frequency shall not be required to pick up all available containers from a participating dealer or redemption center at each pickup provided that all available containers are picked up from the dealer or redemption center within the required frequency.

ITEM 22. Rescind and reserve rule ~~567—107.11(455C)~~.

ITEM 23. Rescind and reserve rule ~~567—107.12(455C)~~.

ITEM 24. Rescind rule 567—107.13(455C) and adopt the following **new** rule in lieu thereof:

567—107.13(455C) Refusing payment of the refund value. A distributor, participating dealer, or redemption center may refuse to pay the refund value and, if applicable, the handling fee in the following situations:

107.13(1) Non-participating Dealers. A dealer may refuse to accept any beverage container and pay the refund value on a container if the dealer is in compliance with one of the requirements of Iowa Code section 455C.4 that allow the dealer not to participate in the bottle redemption program established in Iowa Code Chapter 455C, and the dealer has complied with those provisions requiring proper notification to consumers of the approved redemption centers where the containers may be redeemed.

107.13(2) Refusal of certain store brands.

a. A redemption center may refuse to accept store brand containers for redemption if the store selling those brands refuses to identify distributors to pick up redeemed containers and to pay the full deposit and handling fee. In such cases, the redemption center shall post a notice of the store brands it will not accept and why it will not accept those brands.

b. Any dealer, regardless of whether the dealer is a participating dealer or a non-participating dealer, that collects a deposit for a store brand must provide the consumer with a way to redeem the container to recover the deposit. Failure to do so is a violation of Iowa Code Chapter 455C.

107.13(3) Redeemed containers must be reasonably clean and intact. Consumers shall return containers in a reasonably clean and intact condition. For a refillable beverage container,

the container must hold liquid, be able to be resealed and be in its original shape. A nonrefillable glass container may be chipped, but it may not have the bottom broken out or the neck broken off. A nonrefillable metal container may be dented or partially crushed, but may not be crushed flat. In order to be redeemed, an empty beverage container shall be dry and free of foreign materials other than the dried residue of the beverage. Redemption centers and participating dealers may refuse to redeem containers that are not reasonably clean and in-tact, as well as containers that do not have an Iowa 5-cent redemption label and containers that have had the Iowa 5 cent label removed or if the label is illegible for any reason.

ITEM 25. Amend rule 567—107.14(455C) as follows:

567—107.14(455C) Payment of refund value by distributors.

107.14(1) *Payment to participating dealers.* A distributor shall issue to a participating dealer payment of the refund value and handling fee within one week following pickup or when the dealer pays the distributor for the beverages, if payment is less frequent than weekly.

107.14(2) *Payment to approved redemption centers ~~and redemption centers certified as a redemption center for a dealer~~.* A distributor shall issue to an approved redemption center ~~and to a redemption center for a dealer~~ payment of the refund value and handling fee within one week following pickup unless otherwise agreed to by both the distributor and the redemption center.

107.14(3) *Payment to ~~registered redemption centers~~.* A distributor shall issue to a ~~registered redemption center~~ payment of the refund value and handling fee within one week following pickup ~~or when the dealer which is served by the distributor and which is closest to the registered redemption center pays the distributor for the beverages supplied by the distributor, if payment is less frequent than weekly. Payment to a registered redemption center shall be issued by a distributor at least every 14 calendar days unless otherwise agreed to by both the distributor~~

~~and the registered redemption center.~~

107.14(43) *Payment to redemption centers and dealer agents delivering containers to distributors.* A distributor shall issue to a redemption center or dealer agent payment of the refund value and handling fee within one week of delivery and acceptance of empty beverage containers, unless otherwise agreed to by both the redemption center and the distributor or by both the dealer agent and the distributor, as the case may be.

ITEM 26. Rescind and reserve rule **567—107.16(455C)**.

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

ITEM

#6

DECISION

TOPIC

Notice of Intended Action: Air Quality Rules Update - Chapters 20, 22, 23, 25, and 28

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

Purpose of Proposed Rule Changes

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

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

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

Summary of Proposed Rule Changes

The proposed amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These federal standards are mandatory so they apply whether they are adopted into state regulation or not; however, by incorporating these terms into state rules, the Department can continue to be a delegated authority under the federal Clean Air Act. Please refer to Table 1 in the attached Notice of Intended Action (pages 6-7) for more information on the specific NESHAP standards proposed for adoption.

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

Stakeholder Engagement

The informal public input on the draft rule making package took place between August 16 – 31, 2022. The Department announced the public input period through the Air Quality e-newsletter (GovDelivery) and posted the draft proposal on its air quality public input page (iowadnr.gov/airpublicinput). The e-newsletter currently has over 25,000 subscribers including industry, business associations, trade groups, small businesses, state and federal agencies, and many other organizations and individuals. During the informal input period, the Department received one comment in favor of adopting the new federally designated hazardous air pollutant, one comment from EPA Region 7 with two minor corrections, and one comment that was outside the scope of the rulemaking.

Public Comments and Public Hearing

If the Commission approves the proposed rulemaking, the Department will hold a public hearing on Monday, December 5, 2022, at 1:00 pm, in which participants may participate virtually and by phone. Persons who wish to attend the public hearing should contact Jessica Reese McIntyre at jessica.reesemcintyre@dnr.iowa.gov or by phone at 515-725-9547. The public hearing information will also be provided through the Air Quality e-newsletter (GovDelivery) and on the air

quality public input webpage (iowadnr.gov/airpublicinput). The Department will accept written public comments until 4:30 pm on December 5, 2022.

Christine Paulson, Environmental Specialist Senior
Program Development and Support Section, Air Quality Bureau
Environment Services Division
Memo date: October 11, 2022

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Rule making related to air quality

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

Legal Authority for Rule Making

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

State or Federal Law Implemented

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

Purpose and Summary

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

More specifically, the proposed amendments adopt updated federal new source performance standards (NSPS) and air toxics standards, also known as National Emissions Standards for Hazardous Air Pollutants (NESHAP). These standards apply whether they are

adopted into state regulation or not; however, by incorporating these terms into the State's rules, the Department of Natural Resources (Department) can continue to be a delegated authority under the Clean Air Act (CAA). This allows the Department, rather than the U.S. Environmental Protection Agency (EPA), to be the primary compliance and implementation agency in Iowa.

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

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

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

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

A wide variety of industries may be impacted by the listing of 1-BP, which is primarily

used as a cleaning solvent in solvent cleaning machines or as an applied solvent (e.g., wipe cleaning). 1-BP also has reported uses in both the manufacturing process and the final cleaning of metal and plastic parts.

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

More information on the short and long-term regulatory impacts of EPA's listing of 1-BP is available in the Department's electronic air quality newsletter, which was sent to over 25,000 subscribers on January 25, 2022, and is available on the Department's website at

<https://www.iowadnr.gov/About-DNR/DNR-News-Releases/ArticleID/3885/EPA-adds-1-bromopropane-1-BP-to-the-Clean-Air-Act-List-of-Hazardous-Air-Pollutants>.

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

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

County, implement these standards within their counties.

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

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

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

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

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

The first phase of review is "technology-based," where EPA develops standards for controlling the emissions of air toxics from sources in an industry group or "source category"

(for example, industrial boilers). These maximum achievable control technology (MACT) standards are based on emissions levels that controlled and low-emitting sources in an industry are already achieving.

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

Impact of the NESHAP amendments

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

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

Table 1 below identifies the amendments to the NESHAP source categories adopted by

reference in amendments proposed in Item 5 and Item 6. The standards are identified by source category and are listed in order of publication date in the Federal Register. The table also indicates the subpart in 40 CFR Part 63, as well as the associated paragraph in subrule 23.1(4). Additionally, the table indicates the number of facilities that the Department estimates are currently affected by the specific standard. The Commission is adopting standards that currently do not affect any Iowa sources in case a new facility of that type is constructed in the future.

Table 1
NESHAP Proposed for Adoption

NESHAP: Affected Source Category	Date Published in Federal Register	40 CFR 63 Subpart/Subrule 23.1(4) Paragraph	Estimated Iowa Facilities Affected
Chemical Preparations Industry (Area Source)	12/30/2009*	BBBBBBB/“fb”	1
General Provisions	3/26/2021	A/“a”	N/A
Flexible Polyurethane Foam Fabrication Operations	11/18/2021	MMMMM/“dm”	0
Surface Coating of Automobiles and Light-Duty Trucks	11/19/2021	IIII/“ci”	0
Surface Coating of Metal Cans	11/19/2021	KKKK/“ck”	0
Boat Manufacturing	11/19/2021	VVVV/“cv”	0
Refractory Products Manufacturing	11/19/2021	SSSS/“ds”	0
Carbon Black Production and Cyanide Chemicals Manufacturing	11/19/2021	YY/“ay”	0
List of Hazardous Air Pollutants (Addition of 1-Bromopropane (1-BP))	2/4/2022	A/“a”	N/A
Mercury Cell Chlor-Alkali Plants	5/6/2022	IIII/“di”	0

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

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

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

Fiscal Impact

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

Jobs Impact

After analysis and review of this rule making, these amendments will have an overall neutral impact on private-sector jobs. Some of these amendments may benefit the private sector because they streamline current air quality programs. For the amendments specified in Items 4, 5, and 6, the Commission has determined that there may be job impacts on Iowa businesses.

However, the amendments are only implementing federally mandated regulations, thus any resulting impact originates at the federal level. These amendments are identical to the federal regulations and will not impose any regulations on Iowa businesses not already required by federal law. In some cases, the revised federal standards being adopted provide more flexibility and potential cost savings for affected businesses, offering a positive impact on private-sector jobs. A copy of the jobs impact statement is available from the Department upon request.

Waivers

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

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on Monday, December 5, 2022. Comments should be directed to:

Jessica Reese McIntyre
Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: jessica.reesemcintyre@dnr.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally will be held as follows. Persons who wish to attend the hearing should contact Jessica Reese McIntyre at jessica.reesemcintyre@dnr.iowa.gov. Instructions for meeting participation will be provided prior to the hearing. Persons who wish to make oral comments at the public hearing must submit

a request to Ms. Reese McIntyre prior to the hearing to facilitate an orderly hearing.

Monday, Dec. 5, 2022 1 to 2 p.m.	Virtual hearing/teleconference
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Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

Review by Administrative Rules Review Committee

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

The following rule-making actions are proposed:

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

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

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended or corrected through

October 7, 2020); 40 CFR 60, Appendix A (as amended or corrected through ~~October 7, 2020~~ February 16, 2021); 40 CFR 61, Appendix B (as amended or corrected through October 7, 2020); and 40 CFR 63, Appendix A (as amended or corrected through December 2, 2020).

2. No change.

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

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

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

2. No change.

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

cas#	chemical name
106945	1-Bromopropane

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

23.1(2) *New source performance standards.* The federal standards of performance for

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

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

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~November 3, 2020~~ May 6, 2022, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. A different date for adoption by reference may be included with the subpart designation in parentheses or as indicated in this introductory paragraph. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (~~Appendix A as amended or corrected through December 2, 2020~~), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in rule 567—22.100(455B). For the purposes of this subrule, a “major

source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 6. Adopt new paragraph 23.1(4)“fb” as follows:

fb. National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry. This standard applies to chemical preparations at new and existing facilities that are area sources for hazardous air pollutant emissions. *(Part 63, Subpart BBBBBBB)*

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

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

a. Performance test (stack test). A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended or corrected through

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

b. No change.

c. No change.

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

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

regulations.

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

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

Agency:	Environmental Protection Commission (Commission)/ Department of Natural Resources (Department)
IAC Citation:	567 IAC Chapters 20, 22, 23, 25, and 28
Agency Contact:	Christine Paulson (515) 725-9510; Christine.paulson@dnr.iowa.gov
Statutory Authority:	Iowa Code sections 455B.133 and 455B.134; and United States Clean Air Act Sections 110 (42 USC § 7410), 111 (42 USC § 7411), 112 (42 USC § 7412) and 501-507 (42 USC § 7661 - §7661f).
Objective:	Ensure Iowa's air quality rules are clear, effective, and consistent with federal law and not any more stringent, which provides important regulatory certainty to industry and other interested stakeholders.
Summary:	The proposed rule making adopts updated federal new source performance standards (NSPS), air toxics standards (NESHAP), and federal test methods to ensure that the Department continues to be a delegated authority under the federal Clean Air Act. This allows the Department, rather than the EPA, to be the primary compliance and implementation agency in Iowa. The proposed rule making also adopts a new hazardous air pollutant promulgated by EPA and the 2015 National Ambient Air Quality Standards (NAAQS) for ozone.

2. JOB IMPACT ANALYSIS

<input type="checkbox"/> Fill in this box if impact meets these criteria:
<input checked="" type="checkbox"/> No Job Impact on private sector jobs and employment opportunities in the State. (If you make this determination, you must include the following statement in the preamble to the rule: "After analysis and review of this rulemaking, no impact on jobs has been found.")
Explanation: After analysis and review, it has been determined that the proposed amendments will have an overall neutral impact on private sector jobs and employment opportunities. Some of the rules may ultimately benefit the private sector because they streamline current air quality programs. Others may result in an unquantifiable jobs impact; however, because these are mandatory federal standards, any such impact would originate at the federal level.
<input type="checkbox"/> Fill in this box if impact meets either of these criteria:
<input type="checkbox"/> Positive Job Impact on private sector jobs and employment opportunities in the State.
<input type="checkbox"/> Negative Job Impact on private sector jobs and employment opportunities in the State.
Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:
Categories of jobs and employment opportunities that are affected by the proposed rule:
Number of jobs or potential job opportunities:
Regions of the state affected:
Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")

3. COST-BENEFIT ANALYSIS

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

No other less intrusive or less expensive method exists for achieving the purpose of the proposed rules. The rule updates are identical to the federal regulations, and do not impose any regulations on Iowa businesses not already required by federal law.

4. FISCAL IMPACT

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

5. PREAMBLE

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

Administrative Rule Fiscal Impact Statement

Agency: Environmental Protection Commission (Commission) / Department of Natural Resources (Department)

IAC Citation: 567 IAC Chapters 20, 22, 23, 25, and 28

Agency Contact: Christine Paulson, 515-725-9510; christine.paulson@dnr.iowa.gov

Summary of the Rule: The proposed rule making adopts updated federal new source performance standards (NSPS), air toxics standards (NESHAP), and federal test methods to ensure that the Department continues to be a delegated authority under the federal Clean Air Act. This allows the Department, rather than the EPA, to be the primary compliance and implementation agency in Iowa. The proposed rule making also adopts a new hazardous air pollutant promulgated by EPA and the 2015 National Ambient Air Quality Standards (NAAQS) for ozone. The proposed amendments are identical to the federal regulations. They do not impose any regulations on Iowa businesses not already required by federal law.

Fill in this box if impact meets these criteria:

No Fiscal Impact to the State.

Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal Impact cannot be determined.

Brief Explanation: The Department will use existing resources to implement the proposed rules.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY)	Year 2 (FY)
Revenue by Each Source:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify)	\$0	\$0
TOTAL REVENUE	\$0	\$0
Expenditures:		
GENERAL FUND	\$0	\$0
FEDERAL FUNDS	\$0	\$0
Other (specify) Air Contaminant Fee	\$0	\$0
TOTAL EXPENDITURES	\$0	\$0
NET IMPACT	\$0	\$0

This rule is required by State law or Federal mandate.

Please identify the state or federal law: The changes will implement Iowa Code sections 455B.133 and 455B.134, as well as the United States Clean Air Act sections 110 (42 USC § 7410), 111 (42 USC § 7411), 112 (42 USC § 7412), and 501-507 (42 USC § 7661 - § 7661f).

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change: The Department will use existing resources to implement the proposed rules.

Fiscal impact to persons affected by the rule: After analysis and review, the Department has determined that the proposed amendments will have an overall neutral fiscal impact on the private sector. Some of the rules may ultimately benefit the private sector because they streamline current air quality programs and allow for more operational flexibility. Affected businesses and the public benefit from up-to-date air quality requirements and increased effectiveness. Other rules may result in an unquantifiable fiscal impact; however, because these are mandatory federal standards, any such impact would originate at the federal level. Please refer to Table 1 in the attached Notice of Intended Action for more information on the specific NESHAP proposed for adoption.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): Linn County and Polk County have state-approved local air quality programs, and would likely adopt changes to their ordinances and procedures that match any changes to state rules. If a city or county government were subject to the air quality rules being amended, the local governments would be affected in the same manner as described above for industries and businesses.

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

#7

Decision Item

Commission approval is requested for a contract with Seneca Companies, Inc/Leslie Nagel, of Des Moines, Iowa.

Contract Terms:

Amount: Not to exceed \$300,000

Dates: October 21, 2022 to October 21, 2023.

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

Funding Source(s): Federal LUST Trust Grant

Contract Purpose: This Contract will secure professional environmental services for the DNR necessary to achieve objectives of the Leaking Underground Storage Tank (LUST) Trust Fund Project. The contractor will conduct site visits, collect soil, groundwater, or soil vapor samples at LUST sites and complete either a Tier 1 Report, Tier 2 Site Cleanup Report, or Site Monitoring Report or conduct free product recovery and reporting or corrective action in accordance with Iowa Administrative Code 567-135.6(455B) to 567-135.12(455B). The contractor will be required to submit a scope of work and budget for each site assigned by DNR; work will not commence at a site until DNR gives approval to the contractor.

Selection Process Summary: The Iowa Department of Administrative Services on behalf of the DNR completed the formal bid process by issuing a Request for Proposals for professional services. Three proposals were received and scored by an evaluation committee of three DNR staff members. The team recommends contracting with Seneca Companies, Inc.

Contract History:

The DNR has had previous contractual agreements with Seneca Companies, Inc for environmental field work and reporting. A summary of the two contracts is shown below.

Contract 21ESDLQBTVand-0002:

Timeframe: October 1, 2021 to March 31, 2023 Total to be paid \$48,000

Contract 21ESDLQBTVand-0001:

Timeframe: November 1, 2020 to March 31, 2021 Total paid \$48,000

The current contract followed the Informal Competitive Service procedure because the amount of the contract was below \$50,000. The new contract followed the Formal Competitive Service procedure because the amount of the contract is over \$50,000.

Tammy Vander Bloemen, Environmental Specialist Senior, Land Quality Bureau
Environmental Services Division
October 11, 2022

Attachment A

Scope of Work

Task 1 – Quality Assurance Project Plan

The Contractor must develop a quality assurance project plan that documents the type and quality of the data needed for environment decisions and describe the methods for collecting and assessing the data. The quality assurance project plan must be available for review by the DNR upon request. **Task Milestone Date:** No later than thirty (30) days after signing contract.

Task 2 – Tier 1 Site Assessment

As requested by the DNR, the Contractor must complete a Tier 1 Site Assessment. The Contractor must provide the DNR with costs for pre-approval by the DNR before commencing of any work. **Task Milestone Date:** As requested and no later than ninety (90) days after site assignment.

Task 3 – Tier 2 Site Cleanup Report

As requested by the DNR, the Contractor must complete a Tier 2 Site Cleanup report. The Contractor must provide the DNR with costs for pre-approval by the DNR before commencing of any work. **Task Milestone Date:** As requested and no later than one hundred eighty (180) days after site assignment.

Task 4 – Site Monitoring

As requested by the DNR, the Contractor must conduct site monitoring activities, including conducting sample analysis and submitting a Site Monitoring Report. See [Site Monitoring Guidelines](#) for DNR rules and current guidelines. The Contractor must provide the DNR with costs for pre-approval by the DNR before commencing of any work. **Task Milestone Date:** As requested and no later than ninety (90) days after site assignment.

Task 5 – Free Product Recovery

As requested by the DNR, the Contractor must conduct free product and reporting activities when appropriated in accordance with IAC [567.135.7\(5\)](#). The Contractor must provide the DNR with costs for pre-approval by the DNR before commencing of any work. **Task Milestone Date:** As requested and no later than forty-five (45) days after site assignment.

Task 6 – Corrective Action

As requested by the DNR, the Contractor must conduct corrective action response in accordance with IAC [567.135.12](#), including conducting sample analysis and submitting a Corrective Action Design Report. See [Corrective Action Design Report Guidance](#) for DNR rules and current guidelines. The Contractor must provide the DNR with costs for pre-approval by the DNR before commencing of any work. The corrective action may include but is not limited to the following activities: soil excavation, receptor removal or replacement, or establishing institutional or technical controls. **Task Milestone Date:** As requested and dependent after site assignment.

Task 7 – Tier 3 Site Assessment Policy and Procedure

As requested by the DNR, the Contractor must conduct a Tier 3 assessment in accordance with IAC [567.135.11](#), including conducting sample analysis and submitting a Tier 3 Work plan following DNR rules. The Contractor must provide the DNR with costs for pre-approval by the DNR before commencing of any work. **Task Milestone Date:** As requested and dependent after site assignment.

Enviromental Covenant Ordiance	\$1,515.00 per EC \$660.00 per ordiance	
Soil gas well plugging	\$80.00 per well	
Monitoring well plugging	\$152.00 per well	
Obtain legal description	\$65.00 per description	
Filing NFA certificate	\$100.00 per certificate	
Task 3: Tier 2 Site cleanup Report		Within one hundred eighty (180) days after site assignment
Soil boring 25 ft. deep Each additional ft. deeper than 25 ft.	\$586.00 per boring \$22.00 per ft.	
Non-bedrock monitoring at 25 ft. deep Each additional ft. deeper than 25 ft.	\$1,581.00 per well \$50.00 per ft.	
Bedrock well (including drilling at 25 ft. deep) Each additional ft. deeper than 25 ft.	\$2,500.00 per well \$75.00 per ft.	
Soil sample collection and analysis		
OA-1 Samples	\$96.00 per sample	
OA-2 Samples	\$66.00 per sample	
Water sample collection and analysis		
OA-1/MTBE Samples	\$172.00 per sample	
OA-1 Samples	\$126.00 per sample	
OA-2 Samples	\$66.00 per sample	
Receptor Samples (water line/drinking well/nondrinking water wells/surface water body samples - collection and analysis		
OA-1/MTBE Samples	\$190.00 per sample	
OA-1 Samples	\$167.00 per sample	
OA-2 Samples	\$72.00 per sample	
Soil gas sampling		
Soil gas sampling point (drill rig installation)	\$702.00 per sample	
Soil gas sampling point (push probe)	\$455.00 per sample	
Soil gas samples	\$182.00 per sample	
Mobilization/demobilization costs	\$400.00 per site	
Drill rig mobilization	\$860.00 per mobilization	
Mileage	\$0.63 per mile	June 2022 federal rate \$0.625

Receptor survey	\$350.00 per survey	
Hydraulic conductivity test	\$350.00 per test	
Pathway Evaluation		
One to two pathways	\$375.00 per pathway	
Three to four pathways	\$375.00 per pathway	
Five to seven pathways	\$350.00 per pathway	
Eight to ten pathways	\$325.00 per pathway	
Tier 2 Site Cleanup Report (original report)	\$3,050.00 per report	
Tier 2 Site Cleanup Report (revised report)	\$2,000.00 per report	
Obtain property right of entry agreement	\$300.00 per site	
Site Visit	\$350.00 per site	
Project management - staff time	\$125.00 per site	
Off-site access request	\$300.00 per request	
Environmental Covenant	\$1,515.00 per EC	
Ordinance	\$660.00 per ordinance	
Soil gas well plugging	\$80.00 per well	
Monitoring well plugging	\$152.00 per well	
Obtain legal description	\$65.00 per description	
Filing NFA certificate	\$100.00 per certificate	
Per diem for over night stays		Department of Administrative Services current in-state rates.
Task 4: Site Monitoring		Within ninety (90) days after site assignment
Site visit	\$400.00 per site	
Soil sample collection and analysis		
OA-1 Samples	\$96.00 per sample	
OA-2 Samples	\$66.00 per sample	
Water sample collection and analysis		
OA-1/MTBE Samples	\$172.00 per sample	
OA-1 Samples	\$126.00 per sample	
OA-2 Samples	\$66.00 per sample	
Receptor Samples (water line/drinking well/nondrinking water wells/surface water body samples - collection and analysis		

<p>OA-1/MTBE Samples OA-1 Samples OA-2 Samples Soil gas sampling Soil gas sampling point (drill rig installation) Soil gas sampling point (push probe) Soil gas samples Mileage Receptor survey Site monitoring report (first report) Site monitoring report (subsequent reports) Enviromental Covenant Ordiance Soil gas well plugging Monitoring well plugging Obtain legal description Filing NFA certificate</p>	<p>\$190.00 per sample \$167.00 per sample \$72.00 per sample \$702.00 per sample \$455.00 per sample \$182.00 per sample \$0.63 per mile \$250.00 per survey \$900.00 per report \$800.00 per report \$1,515.00 per EC \$660.00 per ordiance \$80.00 per well \$152.00 per well \$65.00 per description \$100.00 per certificate</p>	<p>June 2022 federal rate \$0.625</p>
<p>Task 5: Free Product Recovery Site visit Mileage Free product measurement and recovery Disposal of water and free product Free product recovery report Project management - staff time</p>	<p>\$300.00 per site \$0.63 per mile \$35.00 per well \$1.50 per gallon \$165.00 per report \$125.00 per site</p>	<p>Within forty-five (45) days after site assignment June 2022 federal rate \$0.625</p>
<p>Task 6: Corrective Action Plan Water Main Replacement Permitting and Traffic Control Water Main Engineering Plan Water Service Line Replacement Permitting</p>	<p>2-3 Bids from subcontractors per site \$3,500.00 per site \$0.00 per plan 2-3 bids from subcontractors per site \$275.00 per site</p>	<p>As requested and dependent after site assignment</p>

<p>Excavation Cost Costs should include the following Excavated contaminated soil, backfill, and compaction Load and haul contaminated soil for offsite disposal Disposal of contaminated soil at landfill OR Disposl of contaminated soil at landfarm (includes permitting) Excavatoin Report</p> <p>High Vacuum Extraction Event-see attached breakdown 1 to 2 well 3 to 4 wells Fluid disposal Summary Report</p>	<p>2-3 bids from subcontractors per site</p> <p>\$0.00 per ton +15%</p> <p>\$26.00 per cubic yard \$775.00 per report</p> <p>\$3,540.00 per day \$3,715.00 per day \$1.50 per gallon \$600.00 per report</p>	
<p>Task 7: Site Assessment Policy and Procedure</p> <p>Tier 3 Work Plan Tier 3 Report</p>	<p>\$2,000.00 per plan \$2,000.00 per report</p>	<p>As requested and dependent after site assignment</p>

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

ITEM # 8

DECISION

High Hazard Dams Risk Review contract with FYRA Engineering, LLC, Contract 23ESDLQBGART-0002

Recommendation:

Commission approval is requested for a service contract with FYRA Engineering, LLC

Contract Terms:

Amount: Not to exceed \$134,884.32

Dates: November 1, 2022 to July 31, 2023.

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

Statutory Authority: 11 IAC Chapter 118

Contract Background: This year's FEMA Dam Safety State Assistance grant had additional funding available through the Infrastructure Investment and Jobs Act (IIJA) and the DNR proposed to FEMA to use up to \$135,000 of this funding to contract a risk analysis for a portion of our high hazard dams in the state.

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, dams that were designed decades ago may have features that don't meet current best practices for dam design and/or other internal weaknesses (called probable failure modes) that have not been identified. These probable failure modes of the dam will be identified along with potential consequences if the dam should fail due to any of these probable failure modes. This process is called a screening level risk assessment. The study will help determine if there are any unacceptable risks that warrant lowering the condition rating of the dam resulting in requiring upgrades to the dam to ensure its ongoing safety.

Over the next several years (dependent on yearly grant funding), the DNR plans to use IIJA FEMA Dam Safety State Assistance Grant funds to:

- 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.

For the first year of this effort, the DNR has \$135,000 available for these evaluations.

Contractor Selection Process:

An Informal RFP was advertised from August 31 to September 29, 2022. One responsive proposal was received. FYRA Engineering, LLC's proposal met the requirements and was very similar to the budgeted amount. Based on responsiveness to the RFP, cost proposal, and reputation; it is recommended to proceed with and contract with FYRA Engineering, LLC.

Contract History:

This is the first contract with FYRA Engineering, LLC for the dam safety program.

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:

Task	Number of Dams Evaluated	Costs	Total Costs
Task 1: 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.	Total Dams <u>27</u>	Cost per Hour \$ <u>173.82</u> Total Hours <u>66</u>	\$ 11,472.12
Task 2: Screening Level Risk Assessment.	Total Dams <u>27</u>	Cost per Hour \$ <u>173.82</u> Total Hours <u>321</u>	\$ 55,796.22
Task 3: Downstream Impacts Assessment.	Total Dams <u>27</u>	Cost per Hour <u>\$ 173.82</u> Total Hours <u>139</u>	\$ 24,160.98
Task 4: Develop mitigation goals and recommended actions for the evaluated dams.	Total Dams <u>27</u>	Cost per Hour \$ <u>173.82</u> Total Hours <u>250</u>	\$ 43,455.00
Grand Total		776	\$134,884.32

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

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

#9

Decision Item**Contract 21ESDLQBLRASM-0001 Amendment #1 to the original contract with Gresham Smith**

Commission approval is requested for a Contract Amendment with Gresham Smith, Columbus, OH.

Amendment #1 to the original contract Terms:

Amendment Amount: \$70,720

Amendment Dates: January 1, 2023 to December 31, 2023

Funding Source: G550 (solid waste account of the Groundwater Protection Fund)

Statutory Authority: Iowa Code Chapter 455J

Amendment Purpose: The purpose of the Contract Amendment is to extend the present contract for professional services to the Environmental Management System (EMS) program and program participants. When the EMS program was first developed in FY2009, DNR relied heavily on the expertise of consultants to model the program after established standards. Due to the technical nature of both the program system and its components, expertise from consultants with professional experience in EMS has continued. This contract will ensure that both the DNR and its EMS participants will continue to receive informed, proven advice, training and consultation.

Original Contract Purpose: Iowa Code Chapter 455J establishes criteria for solid waste planning/service areas to be designated as EMS program participants. Participants require assistance to effectively adopt and implement the program, benefitting the State of Iowa. This contract secured technical and supportive services to the DNR and its EMS program participants. Gresham Smith has supported DNR's continuous improvement of the EMS program by providing informed, researched advice and assisting with the planning, development and coordination of participant training. In addition, Gresham Smith has provided technical assistance to new, existing and potentially future participants during focused trainings and individual consultations.

Original Selection Process Summary:

A formal, competitive bid process was initiated by posting a Notice on the TSB website and issuing a Request for Proposals. Two proposals were received and evaluated by a committee of five DNR staff members, which resulted in the recommendation of Gresham Smith. The following table summarizes the two proposals that were received.

Name	Location	Average Score	Rank	Bid Amount
Gresham Smith	Columbus, OH	172 of 200	1	\$128,660
Burns & McDonnell	Alpharetta, GA	121 of 200	2	\$205,957

Contract History:

The DNR has had continual contractual agreements with Gresham Smith since October 20, 2009. The current contract with Gresham Smith will expire on December 31, 2022 and is summarized below.

Contract 21ESDLQBLRASM-0001, original:

Amount: \$128,600 for 24 months

Timeframe: January 1, 2021 to December 31, 2022

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

Laurie Rasmus, Program Planner, Land Quality Bureau
Environmental Services Division
October 11, 2022

Attachment #1: Statement of Work for Contract 21ESDLQBRASM-0001 Amendment #1			
Deliverable	Task Milestone Date	Amount of compensation allotted to Task	Invoice Due No Later Than
<p>Task 1. DNR and EMS Participant Assistance. Contractor will serve as an advisor for DNR and EMS Participants to provide the services summarized below.</p>		\$64,148.00	Contractor shall invoice DNR on a monthly basis.
<p>Task 1.1 Advice, Coordination and Planning. Assist DNR with program planning, coordination, and occasional advice. This task includes the following activities:</p> <ul style="list-style-type: none"> • Develop a calendar of activities to support the EMS Program and its participant agencies. • Develop the concepts and hosting preparations for EMS conferences, workshops and trainings, including identifying speakers and preparing agendas. Note: the material preparation and attendance for these events is covered under the event-specific subtasks. • Periodically provide DNR and EMS participants professional assistance, research and advice upon request. 			
<p>Original Sub-task 1.2 is revised as follows: Task 1.2 EMS Focused Training. Conduct on-site training focused on one or more of the ten EMS Elements. This task includes the following activities:</p> <ul style="list-style-type: none"> • Consult with DNR to determine area of focus for training. • Develop training materials. • Conduct training for up to two full days. 			
<p>Task 1.3 On-going EMS Participant Training. Conduct the following activities to support continual improvement for EMS participants as needed:</p> <ul style="list-style-type: none"> • Provide up to four web-hosted meetings for individual or groups of EMS agencies per year. • Review EMS implementation progress and provide guidance to participant agencies. 			
<p>Original Sub-task 1.4 is revised as follows: Task 1.4 EMS Annual Summer Workshop. Develop materials for and conduct a one-day, on-site EMS workshop during the summer of 2023.</p>			
<p>Original Sub-task 1.5 is revised as follows: Task 1.5 EMS Annual Fall Conference. Develop materials for and conduct a one-day, on-site EMS conference during November 2023.</p>			

<p>Original Sub-task 1.6 is revised as follows: Task 1.6 Materials to Benefit Participants and Program. Develop and revise promotional or guidance materials for the EMS program as needed.</p>			
<p>Original Sub-task 1.7 is revised as follows: Task 1.7 New Participant Training. Provide initial training and support for up to two Tier 1 EMS participant agencies as needed:</p> <ul style="list-style-type: none"> • Develop materials for and conduct an EMS kickoff meeting for each new participant. • Develop materials for and conduct up to four webinar trainings on initial EMS development for new participants. • Develop materials for and conduct up to two on-site trainings for each new participant. • Conduct up to five conference calls for each new participant to provide feedback and advice during the development of their plans and policies to implement the ten EMS Elements. 			
<p>Task 1.8 EMS Participant Recruitment Assistance. Support DNR in recruiting new EMS participant agencies as needed.</p>			
<p>Task 1.9 Additional Assistance. Provide additional assistance for EMS program participants as requested and agreed upon between Contractor and DNR. Potential assistance needs may include feedback and guidance on developing objectives/targets, determining steps for an action plan or revising a written policy.</p>			
<p>Original Task 1 Assumptions are revised as follows: Task 1 Assumptions.</p> <ul style="list-style-type: none"> • DNR may determine that some or all on-site events may instead be held virtually. A means for estimating the exclusion of travel costs and printing costs for virtual events is to be included. • Contractor will provide printing for on-site workshop and conference materials, assuming approximately 40 pages for each event for up to 50 attendees. • Contractor will provide printing for the on-site EMS Focused Training, assuming reprinting of the DNR EMS Audit Guide or similar (25 color copies) as well as handouts (30 pages, 8.5" x 11", for up to 30 attendees). • With the assumption that events are held on-site, Contractor will travel for the EMS Focused Training (1 trip), kickoff meetings 			

<p>for new Tier 1 participants (1 trip), Summer Workshop (1 trip) and annual EMS Conference (1 trip). Up to two Contractor staff will attend each event.</p> <ul style="list-style-type: none"> Up to two Tier 1 agencies may join the EMS program during the Contract period. 			
<p>Task 2. Program Management. Contractor will provide on-going EMS program management as summarized below.</p> <p>Task 2.1. Ongoing Project management, scheduling and documentation as required and including:</p> <ul style="list-style-type: none"> Managing project budget, scope and schedule. Providing monthly billing invoices. Providing a summary of costs broken down by tasks, subtasks and expenses. 	Ongoing throughout Contract.	\$6,572.00	Contractor shall invoice DNR on a monthly basis.
Total		\$70,720.00	

LITIGATION REPORT

Prepared by: Kelli Book
Date: September 23, 2022

I. Summary

The DNR seeks referral of Shane and Michelle Larsen to the Attorney General's Office due to animal feeding operation violations at their facility located in Kossuth County. This referral includes violations for the Larsens' failure to submit a manure management plan (MMP) update for their facility by May 1, 2022; failure to timely submit the annual compliance fees for 2022 by May 1, 2022; and failure to comply with Administrative Order No. 2021-AFO-24.

II. Alleged Violator

Shane and Michelle Larsen
299 255th Avenue
Granada, Minnesota 56039

III. Description of Facility

Shane and Michelle Larsen own an animal feeding operation located at 3404 60th Avenue; Lone Rock, Iowa (Section 36, Seneca Township, Kossuth County). The facility consists of three confinement buildings that house 3,000 finish swine (1,200 animal units). An original Phosphorus Index MMP was submitted in August 2017 after the Larsens purchased the facility. The annual MMP update deadline was established as May 1 of each calendar year and the annual compliance fee for the facility is \$180.00.

IV. Alleged Violations (including facts and applicable law)

A. FACTS

The 2021 MMP submission was to be a complete Phosphorus Index MMP and was due May 1, 2021. On May 10, 2021, DNR issued a Notice of Violation letter to the Larsens for failing to submit the complete 2021 Phosphorus Index MMP and annual compliance fee.

On October 10, 2021, DNR issued Administrative Order No. 2021-AFO-24 to the Larsens for failing to submit the 2021 Phosphorus Index MMP and annual compliance fee. The order required the Larsens to submit the complete Phosphorus Index MMP and annual compliance fee within 60 days of issuance of the order. The order also required the Larsens to pay a \$3,000.00 administrative penalty within 60 days of issuance of the order. To date, the Larsens have not

LITIGATION REPORT for SHANE and MICHELLE LARSEN

October 2022 EPC Meeting

submitted the complete Phosphorus Index MMP and the annual compliance fee of \$180.00 for 2021.

The 2022 annual MMP update and annual compliance fee for the facility were due May 1, 2022. On May 10, 2022, DNR issued a Notice of Violation letter to the Larsens for failing to submit the 2022 MMP update and annual compliance fee. The letter informed the Larsens that the failure to submit the MMP update and fee may result in further enforcement with a monetary penalty.

On June 1, 2022, Lori Rattay, DNR Field Office 2 administrative assistant, attempted to contact Mr. Larsen by telephone. However, the message stated that the mailbox was full and could not accept any messages. On June 21, 2022, Jeremy Klatt, DNR Field Office 2 environmental specialist senior, drove by the facility and noted recently dead swine carcasses at the doors of each of the confinement buildings indicating the facility was currently in operation.

To date, the Larsens have not submitted the annual MMP update and annual compliance fee of \$180.00 for 2022.

Past History

In addition to the violations cited above, the Larsens failed to timely submit the 2019 MMP update and compliance fee by May 1, 2019. On May 12, 2019, DNR issued a Notice of Violation letter for the violations. The MMP update and compliance fee were submitted and approved in June 2019.

B. APPLICABLE LAW

Iowa Code section 459.103 provides that the Commission shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

567 IAC 65.16(3) requires that all persons required to submit a MMP also submit an updated MMP and compliance fees on an annual basis. This requirement became effective March 1, 2003. The updated plan must reflect all amendments made during the period of time since the previous MMP submission. The compliance fee is fifteen cents per animal unit. The Larsens failed to submit an MMP update for 2022. Additionally, the Larsens failed to submit compliance fee for 2022 in the amount of \$180.00.

The Larsens also failed to comply with the terms of Administrative Order No. 2021-AFO-24. The Larsens failed to submit the 2021 Phosphorus Index MMP and annual compliance fee. They also failed to pay the administrative penalty assessed in the order.

Iowa Code sections 459.603 and 455B.191(5) authorize the Attorney

LITIGATION REPORT for SHANE and MICHELLE LARSEN
October 2022 EPC Meeting

General to institute legal proceedings necessary to secure enforcement of the water quality provisions of the law. **Iowa Code section 455B.191(2)** authorizes civil penalties of up to \$5,000.00 per day of violation of statutory provisions or DNR rules.

V. Witnesses

Jeremy Klatt will be present at the EPC meeting to answer additional questions.

2023 Calendar Year Dates

Tuesday, January 17

Tuesday, February 21

Tuesday, March 21

Tuesday, April 18

Tuesday, May 16

Tuesday, June 20

Tuesday, July 18

Wednesday, August 9 **Joint Meeting with NRC, DNR Family night @ State Fair (optional)*

Tuesday, September 19

Tuesday, October 17

Tuesday, November 14

Tuesday, December 19