

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Rulemaking related to inspections, compliance, self-audits, and enforcement

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

Legal Authority for Rulemaking

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

State or Federal Law Implemented

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

Purpose and Summary

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

In more detail, the new Chapter 10:

1. Provides guidelines for submitting and responding to complaints;
2. Provides the procedures for self-disclosures of environmental violations, which may result in immunity from administrative penalties;
3. Identifies the Department of Natural Resources’ (Department’s) compliance and enforcement framework; and
4. Provides the policies and procedures for the assessment of administrative penalties.

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

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7206C**. A public hearing was held on January 16, 2024, at 1:30 p.m. in the Wallace State Office Building, Des Moines, Iowa, and a public hearing was held virtually on January 25, 2024, at 10 a.m. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

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

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rulemaking will become effective on June 19, 2024.

The following rulemaking action is adopted:

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

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

CHAPTER 10
COMPLAINTS, AUDITS, ENFORCEMENT OPTIONS
AND ADMINISTRATIVE PENALTIES

DIVISION I
COMPLAINTS AND INVESTIGATIONS

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

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

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

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

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

567—10.2 to 10.9 Reserved.

DIVISION II
ENVIRONMENTAL AUDITS

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

567—10.11(455K) Notice of audit.

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

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

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

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

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

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

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

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

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

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

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

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

567—10.15 to 10.19 Reserved.

DIVISION III
ENFORCEMENT OPTIONS

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

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

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

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

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

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

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

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

567—10.23 to 10.29 Reserved.

DIVISION IV
ADMINISTRATIVE PENALTIES

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

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

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

- a. The actual or threatened harm to the environment or public health and safety.
- b. Involvement of toxic or hazardous substances or potential long-term effects of the violation.
- c. The degree to which ambient or source-specific standards are exceeded, where pertinent.
- d. Federal program priorities, size of facility, or other pertinent factors.
- e. Whether the violation is repeated or whether it violates an administrative or court order.
- f. Whether the type of violation threatens the integrity of a regulatory program.
- g. Expenses or efforts by the government in detecting, documenting, or responding to a violation.

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

a. The degree of intent or negligence. The standard of care required by the laws of the state of Iowa will be considered.

b. Whether the case involves false reporting of required information, or tampering with monitoring devices.

c. Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

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

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

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

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

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

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

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

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

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

[Filed 4/16/24, effective 6/19/24]

[Published 5/15/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/15/24.