

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to increase from the current fixed dollar amount of \$39 per ton to \$62 per ton the maximum annual Title V Operating Permit fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated pollutant emitted annually from a major source. Budget projections and estimates of actual emissions indicate that the annual fee will have to be increased above \$39 per ton to maintain the current level of service in state fiscal years 2010 to 2015.

The Department met with members of the public and industry and with environmental groups to obtain preliminary input on raising the maximum fee. The data, assumptions, and methodology used to arrive at the \$62 per ton fee level cap and other changes were reviewed and discussed in detail at meetings on May 22 and June 5, 2008. The meetings were advertised in the State of Iowa's Public Meeting Calendar, on the Air Quality Bureau Web site, and by list server articles. The Department requested that comments be submitted by July 1, 2008. Two comments were received by this date. One comment suggested exploring additional grant opportunities while creating a new fee program for minor sources. The second comment concurred with the need to increase the fee cap but also requested that the Department continue to restrict the use of the fees to air quality programs for which they were intended; to streamline permitting processes; to seek other funding mechanisms; and to recognize that clean air benefits all Iowans and, therefore, the State's general revenue funds should provide support for the Department.

The Department received additional comments from MidAmerican Energy after the July 1, 2008, deadline. MidAmerican Energy raised several concerns on increasing the fee cap and the use of Title V funds for various program areas. The Department met with MidAmerican on July 24, 2008, to address their concerns. No additional comments have been received.

The data, assumptions, and methodology were determined to be reasonable based on past budget information, available salary contract information, and past actual emissions trends. The Department will continue to work with interested parties to examine alternate fee scenarios.

The increase from \$39 per ton to \$62 per ton is based on budget projections for the next three state fiscal years and estimates of the actual emissions during this period. Basing the maximum fee level on budget projections for the next five state fiscal years should prevent the need for the Commission to change the fee level cap provision in subrule 22.106(1) again for at least this period of time. The need to increase the maximum fee level to maintain the current level of services is the result of the combination of increases in staff salaries due to negotiated contract increases and projected decreases in actual emissions over this period. The \$62 per ton maximum fee level is a 59 percent increase over the next five state fiscal years to account for estimated increases in salary expenditures, including indirect costs, and increases in the costs of equipment, including equipment to operate an ambient air monitoring network.

Any person may make written suggestions or comments on the proposed amendment on or before November 13, 2008. Written comments should be directed to Wendy Rains, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. Comments may be sent by fax to (515)242-5094 or by electronic mail to wendy.rains@dnr.iowa.gov.

A public hearing will be held on November 12, 2008, at 10 a.m. at the Department's Air Quality Bureau offices located at 7900 Hickman Road, Urbandale, Iowa. Comments may be submitted orally or in writing during the public hearing. All comments must be received no later than November 13, 2008. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility, should contact the Department of Natural Resources to advise of any specific needs.

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

The following amendment is proposed.

Amend subrule 22.106(1) as follows:

22.106(1) *Fee established.* Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than ~~\$39~~ \$62 per ton without adopting the change pursuant to formal rule making.