

**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,” to adopt a new Chapter 30, “Fees,” and to amend Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to gain stakeholder input related to the scope, services, and funding options available to address budget challenges facing the Department’s air quality program. Five options are proposed in these amendments. Currently the Title V operating permit program rules allow the Department to collect up to \$56 per ton for air pollutants emitted.

In December, the Department presented the Commission with a proposed one-year fee cap of \$65 per ton. Members of the Commission requested that the Department explore alternative proposals in order to continue to provide the same level of service. The five options presented in this rule making were developed as a result of the Commission’s comments and subsequent Department review.

Subrule 22.106(1) describes when the Title V fee is due and how it is calculated. The subrule directs the Department to present to the Commission each year no later than the March Commission meeting an estimated or proposed budget to cover the reasonable cost of administering the Title V program. The Title V fee is then calculated by dividing the estimated budget by the chargeable emissions as reported by facilities each March 31. The subrule requires that the Title V fee be set by the Commission no later than the May Commission meeting. The annual fee must be set at or below the Title V fee cap. This subrule also establishes the maximum Title V fee (fee cap), which can only be changed through administrative rule making. Since the program’s inception, the Title V fee cap has been raised twice.

The Title V fee is required under the federal Clean Air Act (42 U.S.C. 7401-7671q) to be paid by those facilities with potential emissions that exceed the major stationary source thresholds. A major stationary source, also referred to as a Title V facility, is a facility that has the potential to emit 100 tons per year (tpy) or more of any air pollutant; or the potential to emit 10 tpy or more of any individual hazardous air pollutant; or the potential to emit 25 tpy or more of any combination of hazardous air pollutants. Currently Iowa has 278 Title V facilities which are affected by this rule making. Examples of Title V facilities include electric utilities, grain processors, cement plants, and manufacturing operations.

In Iowa, the Title V fee is currently based on the first 4,000 tons of each regulated air pollutant emitted each year from each major stationary source in the state. Regulated air pollutants for which Title V fees are paid include: particulate matter equal to or less than 10 micrometers in diameter (PM<sub>10</sub>), sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), lead (Pb), and 187 hazardous air pollutants (HAP). The Title V fee is required to be sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V program requirements (42 U.S.C. 7661a).

The Title V fee is calculated by dividing the estimated budget by the chargeable emissions as reported by facilities each March 31. The Title V fees are due each July 1 and fund the program for the entire year. For example, the Title V fees to be paid on July 1, 2011, are based on 2010 emissions and will fund the program for state fiscal year (SFY) 2012, or July 1, 2011, to June 30, 2012.

In the current fee structure, the Title V fee increases as emissions decrease. Emission levels have varied over the history of the program. A sharp decline in tons occurred after SFY 2007’s peak of 242,000 tons, to SFY 2011’s current low of 166,000 tons.

The Title V fee cap was created when the Title V program was adopted in the early 1990s. Stakeholders wanted the Department to have flexibility when setting the Title V fee but also wanted a maximum fee specified in administrative rules to allow appropriate notice for planning purposes.

The current Title V fee cap of \$56 was set in 2009 for fees collected on July 1, 2009, and July 1, 2010, with the expectation that emissions would not decline (Table 1). However, the economic downturn combined with implementation of federal regulations led to a steeper than anticipated decline in emissions.

Table 1: Fees Collected Under the \$56 Title V Fee Cap

Date Fee Collected	Fee	Predicted Emissions	Actual Emissions
July 1, 2009	\$52	224,000	201,000
July 1, 2010	\$56	224,000	166,000

The current Title V fee of \$56 was established at the May 2010 Commission meeting and was based on 166,000 tons. The reduced emissions dictated a reduction of \$1.2 million in expenditures for the current fiscal year in order not to exceed the maximum fee.

The Department has a long established tradition of meeting with stakeholders regarding Title V fiscal matters. The Department recently met with members of the public, industry, and environmental groups to obtain preliminary input on the Title V fee cap. Meetings were conducted on November 12, November 19, and December 2, 2010. The initial proposal to stakeholders, which is reflected below in Option 2, presented a five-year fee cap of \$89.

Budget projections and estimates of further reductions in actual emissions indicate that revenue must be increased to maintain the current level of service. Emissions are anticipated to continue to decline by 5 percent, to 158,000 tons for the upcoming year, based on proposed and existing federal regulations. The five-year tonnage estimate predicts a decline to 138,000 tons.

Estimated expense increases include an additional \$305,000 or 4.9 percent in personnel costs, including the Department's indirect rate. Professional service contracts are estimated to increase by \$100,000 or 3.4 percent. Expense increases also include restoration of the ambient monitoring support for equipment and analysis to SFY 2010 levels, which is an estimated increase of \$371,000. Finally, an additional \$11,000 is restored to allow maintenance of access to existing electronic records. Total Title V expenses are projected at \$10,727,000, leaving a remaining \$18,000 for adjustments that may be needed in the budget process.

Consequences of projected underfunding of the air quality program include insufficient data for complex permitting projects, significant delays in permit issuance, and the inability to complete federal requirements in a timely manner. Possible consequences are listed in Table 2 below.

If the Title V fee cap is not raised, reduced staffing would increase by 20 percent the issuance time for preconstruction and operating permits. Significant additional federal standards such as new ambient air quality standards and emissions standards for hazardous air pollutants already have increased permit issuance time, and it will continue to rise without sustained or increased support. Small business assistance provided by the University of Northern Iowa and the Iowa Department of Economic Development would, in addition to the reduction in the current year, be further reduced or eliminated. The ambient air monitoring network, which informs Iowans whether their health is being protected, would be reduced or eliminated. The ambient air monitoring network also provides critical data to industry in support of quick permitting which, if reduced or eliminated, could significantly slow economic development projects by up to one year. If implementation of the federal Clean Air Act requirements declines below acceptable levels, U.S. EPA may pursue a deficiency finding for all or part of the state's implementation of the Act.

Table 2: Possible Consequences If Revenue Is Not Increased

Possible Program Reductions or Eliminations	Result
Curtail provision of electronic records	Facilities and the public will have to physically come to the Air Quality Bureau for records or pay higher costs to obtain records. Lack of additional staffing will result in delays in facilities' ability to apply for permits.
Reduce funding to local programs for major source support	Local programs will have to scale back their assistance and rate of permitting or collect additional fees locally to maintain the same level of service.
Significantly reduce or eliminate the small business assistance programs	Assisting small businesses would become the responsibility of existing staff who already have full permitting and compliance assistance duties.
Reduce level of effort in regional modeling of interstate transport of air pollutants	Mischaracterizations of Iowa facilities' emissions would be carried into federal and regional air pollution reduction plans. This may result in unnecessary regulation of Iowa facilities in the future.
Reduce assistance to facilities and communities approaching or near nonattainment	Increasing numbers of areas would show nonattainment or exceedances of the health standards. Severe impacts on economic growth would also result.
Eliminate supplemental funding of Attorney General's support	Elimination of early review and prioritization of enforcement cases would result. Failure to take timely action when appropriate will excessively disrupt industry efforts to come back into compliance.
Reduce equipment support for monitoring network	Increased periods of downtime on monitors will increase the number of instances where high values will be required to be substituted for missing data. This will increase the likelihood of "calculated" violations.
Curtail development of compliance assistance tools and outreach activities	Facilities and industry groups will no longer have specific guidance from the Department on the implementation of new Hazardous Air Pollutant or New Source Performance Standards, likely decreasing the level of compliance. Outreach on explaining permit requirements or permitting site visits will also be drastically reduced or possibly eliminated.
Reduce level of effort in operating permit issuance, construction permit issuance, compliance reviews, inspections, federal rule adoptions, attainment and nonattainment planning, emissions inventory collection and analysis, ambient air monitoring, dispersion and regional modeling, public records support, and stack-test observation	Planning and adopting federal and state regulations, including those requirements in permits, providing compliance assistance and measuring and monitoring compliance and air quality are all integral to ensuring that the quality of the air Iowan's breathe meets federally established, scientifically credible air quality standards. Those standards are set to ensure that children, the elderly, those with health challenges, and the healthy have air to breathe that is not injurious to health.

Sufficient funding for critical program elements is not provided for in these options, including the following: additional staffing required for mandatory greenhouse gas permitting; resources and staffing needed to comply with new requirements of many federal air quality standards; staffing requirements if nonattainment areas are declared in the state; and restoration of a portion of the small business permit assistance program that was eliminated to help balance the SFY 2010 budget (Table 3).

Table 3: Unfunded Requirements and Needs for SFY 2012

Unfunded Requirements	Explanation	Cost
Greenhouse gas permitting	Based on current estimates	\$300,000
NO <sub>2</sub> monitoring equipment, operation, maintenance	New NAAQS* requirements	\$218,400
SO <sub>2</sub> monitoring equipment, operation, maintenance	New NAAQS requirements	\$331,700
Ozone monitoring equipment, operation, maintenance	New NAAQS requirements	\$783,400
PM <sub>2.5</sub> monitoring equipment, operation, maintenance	New NAAQS requirements	\$161,300
Nonattainment staffing	Six FTEs in 2 areas	\$450,000
Unfunded Needs	Explanation	Cost
Air toxics at schools evaluations	Three FTEs and equipment	\$275,000
Forecasting	Three FTEs and equipment	\$300,000
Records imaging	Backlog and ongoing	\$130,000
Reinvestment in small business assistance	Restore permitting assistance	\$230,000

\* National Ambient Air Quality Standards

Support for new monitoring to determine whether air quality meets new federal standards for sulfur dioxide, nitrogen dioxide, and ozone and ongoing support for monitoring are critical. The Department is faced with curtailing its investigation of the air toxics at schools report that indicated dangerous levels of toxics near some schools in Iowa. New reviews of greenhouse gases in permits will slow permitting without investment of additional resources. Forecasting of air contaminant levels which may not meet new, more stringent health-based standards will not be funded. Electronic access to records will maintain only the existing records. Electronic records access is now available only for most document types created prior to January 2005. No resources are provided in the Title V budget to accommodate any relocation expenses if the Bureau were required to move out of the current location.

In consideration of existing regulatory authority, previous meetings and discussions with stakeholders on funding alternatives, and the time constraints for developing this rule making, several alternatives were explored. These alternatives developed into specific funding options. The following are the five options proposed to increase the Department's Air Quality Bureau revenue.

**Option 1 (Item 2)**

Proposed Item 2 amends subrule 22.106(1) to establish a Title V fee cap of \$65 per ton based on a conservative estimate of the budgetary needs for the next year. Item 2 is the original proposal provided to the Commission at the December 2010 Commission meeting. Item 2 provides status quo services and does not address funding for critical program elements indicated in Table 3.

**Option 2 (Item 3)**

Proposed Item 3 amends subrule 22.106(1) to establish a Title V fee cap of \$89 per ton based on a conservative estimate of the budgetary needs for the next five years. Item 3 would fund the program and allow the Department time to find additional efficiencies and funding resources. This information was provided to stakeholders in November 2010. The Title V fee for SFY 2012 would likely be set at \$65 per ton at the May Commission meeting. Item 3 provides status quo services and does not address funding for critical program elements indicated in Table 3.

**Option 3 (Item 4)**

Proposed Item 4 amends subrule 22.106(1) to establish an annual minimum Title V fee of \$5,000 and to raise the Title V fee cap to \$65 per ton. Item 4 would require every Title V facility to pay a \$5,000 minimum fee and also pay a lowered per-ton emission fee. A minimum Title V fee would provide for a more equitable system because each facility would pay for the costs to issue initial Title V permits, renewals, and modifications to Title V permits; to review emissions; and to inspect facilities. A minimum Title V fee also would provide the Department with a more stable basis of funding and enable the Department to rely less on fees based on variable emissions. Assuming 275 facilities

remain in the Title V program, a \$5,000 minimum Title V fee would provide \$1,375,000 in revenue. The remainder of the budget would be accommodated by a \$56 per-ton emissions fee. The \$5,000 Title V minimum fee and emissions fee of \$56 per ton would increase fees paid by approximately 250 facilities and decrease fees paid by approximately 25 facilities. The details of the change on a facility basis are listed in the Title V Fee Cap Scenarios spreadsheet on the Commission Web site, <http://www.iowadnr.gov/epc/11jan18a.html>. The Title V fee cap of \$65 per ton is anticipated to provide sufficient funds through the next two years (SFY 2012-2013). The first payment of the base fee would be due on July 1, 2011. Item 4 provides status quo services and does not address funding for critical program elements indicated in Table 3.

**Option 4 (Item 5)**

Proposed Item 5 amends subrule 22.106(2) to remove the 4,000-ton ceiling on emissions, reduce the fee to \$47 per ton, and retain the fee cap of \$56 per ton. Based on the SFY 2010 budget estimate and using 158,000 tons of chargeable emissions, with an additional 62,000 tons of pollutants that currently exceed the 4,000-ton cap, the Title V fee would be reduced under this option to \$47 per ton. Carbon monoxide would continue to be excluded from the list of chargeable pollutants. The details of the change on a facility basis are listed in the Title V Fee Cap Scenarios spreadsheet on the Commission Web site, <http://www.iowadnr.gov/epc/11jan18a.html>. Five facilities would incur higher fees while the remaining 270 facilities would have reduced fees. These five facilities may reduce emissions in the future based on existing and proposed federal regulations. Item 5 provides status quo services and does not address funding for critical program elements indicated in Table 3.

**Option 5 (Items 1, 6, 7 and 8)**

Proposed Items 1, 6, 7 and 8 amend paragraph 22.1(3)“b” and rule 567—33.1(455B) and adopt new 567—Chapter 30 and rule 567—33.2(455B) to establish a preconstruction permit application fee for Title V facilities. The Department’s air pollution control program is one of the few in the country that does not charge a preconstruction permit fee. A Title V or major source preconstruction permit application fee would fund construction permitting activities and remove the expenses from the emissions-based fee. Stakeholders have commented on the desire to fund preconstruction permit activities in an alternate manner. In the current fee structure, all Title V facilities support preconstruction permit activities.

Proposed Item 1 directs major construction permit applicants to pay a preconstruction application fee. Item 1 would charge fees on only those Title V facilities that use the service.

Proposed Item 6 creates a new Chapter 30 entitled “Fees.” In Item 6, three separate levels of application fees are proposed. A prevention of significant deterioration (PSD) project would have a \$20,000 application fee with a \$5,000 per-emission point fee. Non-PSD complex projects would have a \$10,000 application fee with a \$1,500 per-emission point fee. Standard project fees would be \$3,000 per application. Item 6 would also establish an applicability determination fee of \$1,000 for each determination request submitted to the Department, separate from the preconstruction permitting review.

Proposed Items 7 and 8 refer applicants for prevention of significant deterioration (PSD) permits to new Chapter 30 for fee requirements.

Preconstruction permit activities include application completeness review; site visits as needed; review of application purpose with applicant; emission calculations review; applicability determination; modeling; stack test observation; record keeping; reporting determinations; engineering evaluation; permit drafting; modifying draft permits based on applicant comments; permit issuance; and associated tracking database and records support.

The current cost of these activities has been quantified and adjusted to reflect the estimated level of permitting for the upcoming year. The fees established in Option 5 would, beginning July 1, 2011, for state fiscal year 2012, provide approximately \$1.2 million annually. Iowa Code section 445B.133(8)“a” authorizes Title V source fees that are deposited into the air contaminant source fund set forth in Iowa Code section 455B.133B.

Any person may make written suggestions or comments on the proposed amendments on or before March 11, 2011. The Department specifically requests comments regarding the possibility of adopting rules that combine aspects of proposed Options 1 through 5. Written comments should be directed to

Wendy Walker, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324. Comments may be sent by fax to (515)242-5094 or by electronic mail to [wendy.walker@dnr.iowa.gov](mailto:wendy.walker@dnr.iowa.gov).

An informational meeting will be held on February 22, 2011, at 10 a.m. at the Department's Air Quality Bureau offices located at 7900 Hickman Road, Windsor Heights, Iowa. At the informational meeting, DNR staff will be available to answer questions about the proposed amendments.

A public hearing will be held on March 11, 2011, from 1 to 3 p.m. at the Department's Air Quality Bureau at the address listed above. Comments may be submitted orally or in writing during the public hearing. All comments must be received no later than 4:30 p.m. on March 11, 2011.

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

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

The following amendments are proposed.

ITEM 1. Amend paragraph **22.1(3)“b,”** introductory paragraph, as follows:

*b. Construction permit applications.* Each application for a construction permit shall be submitted to the department on the form “Air Construction Permit Application.” Major stationary sources shall include an application fee pursuant to 567—Chapter 30. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while doing work for that corporation. The application for a permit to construct shall include the following information:

ITEM 2. 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 ~~\$56~~ \$65 per ton without adopting the change pursuant to formal rule making.

ITEM 3. 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 ~~\$56~~ \$89 per ton without adopting the change pursuant to formal rule making.

ITEM 4. 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 emission fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994; and shall pay an annual base fee, beginning [insert effective date of these amendments]. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The emission 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 fees 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 fees 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 fees. The commission shall not set the emission fee higher than ~~\$56~~ \$65 per ton or the base fee higher than \$5,000 without adopting the change pursuant to formal rule making.

ITEM 5. Amend subrule 22.106(2) as follows:

**22.106(2) Fee calculation.** The fee amount shall be calculated based on ~~the first 4,000 tons of each~~ regulated air pollutant or contaminant emitted each year from each major source.

ITEM 6. Adopt the following new 567—Chapter 30:

CHAPTER 30  
FEES

**567—30.1(455B) Definition.**

“*Project*,” for the purpose of this chapter, means one or more preconstruction permit applications submitted simultaneously to construct, install, reconstruct or alter any equipment or control equipment.

**567—30.2(455B) Title V construction permit fees.**

**30.2(1) Fee required.** Effective July 1, 2011, a nonrefundable application fee for each major stationary source preconstruction project required in accordance with 567—subrule 22.1(1) or 567—Chapter 33 or requests for federally enforceable limits through permitting shall be submitted with each preconstruction project application. Undefined terms are defined pursuant to 567—Chapters 20, 22 and 33.

*a.* Each applicant for a project that is required to obtain a prevention of significant deterioration (PSD) permit (567—Chapter 33) shall pay \$20,000 per project and \$5,000 per emission point.

*b.* Each applicant for a project that is not required to obtain a prevention of significant deterioration (PSD) permit (567—Chapter 33) and the project: (1) includes more than five permits, or (2) requires a case-by-case review under 112(g) of the Act, or (3) requests a voluntary operating permit, or (4) requires a public comment period shall pay \$10,000 per project and \$1,500 per emission point.

*c.* Each applicant for a project that is not required to obtain a prevention of significant deterioration (PSD) permit (567—Chapter 33) and the project: (1) includes five or fewer permit applications, or (2) does not require a case-by-case review under 112(g) of the Act, or (3) does not request a voluntary operating permit, or (4) does not involve a public comment period shall pay \$3,000 per project.

**30.2(2) Fees for determinations.** The fee for a request for determination regarding whether a preconstruction permit application is required shall be \$1,000 per determination request.

**30.2(3) Payment of fees.** Fees shall be paid by check or money order and be made payable to the “Iowa Department of Natural Resources” and be sent to the department at the address on the preconstruction permit application forms.

**30.2(4) Correction of errors.**

*a.* If an owner or operator, or the department, finds an administrative error in a construction permit issued by the department, the owner or operator shall submit to the department revised preconstruction

permit application forms that indicate the necessary corrections. These forms shall be submitted as soon as possible after the errors are discovered.

*b.* Fees shall not be assessed for administrative errors as specified in paragraph 30.2(4) “*a.*” These rules are intended to implement Iowa Code section 455B.133.

ITEM 7. Amend rule **567—33.1(455B)**, first unnumbered paragraph, as follows:  
Rule 567—33.2(455B) ~~is reserved~~ refers to fees established in 567—Chapter 30.

ITEM 8. Adopt the following **new** rule 567—33.2(455B):

**567—33.2(455B) Application fee.** Each application for a prevention of significant deterioration (PSD) permit pursuant to 567—33.3(455B) shall include an application fee pursuant to 567—Chapter 30.