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June 23, 2023

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, IA 50319-0034

RE: Iowa DNR Rulemaking – Chapter 10

Dear Ms. Book:

The Iowa Environmental Council (IEC) offers the following comments on the proposed revisions to 567 Iowa Administrative Code Chapter 10. These comments represent the views of the Iowa Environmental Council, an alliance of more than 100 organizations, at-large board members from business, farming, the sciences and education, and over 500 individual members. IEC's members hike, fish, paddle, swim, and recreate in and around wetlands, lakes, rivers, and streams throughout the state.

First, deleting descriptions of enforcement options in section 10.200 reduces the information available to regulated parties and the public. The rules as written now provide helpful information on how DNR carries out enforcement and what each type of action is for. We ask that DNR retain the descriptions in section 10.200.

Second, IEC recommends DNR revise the cap for administrative enforcement penalties. The administrative penalties in 10.301 authorizes the Environmental Protection Commission (EPC) to adopt penalties by rule. The current cap of \$10,000 has been in place since 1992.¹ Based on the U.S. Bureau of Labor Statistics CPI calculator, an equivalent amount in today's dollars would be \$21,646.² For comparison, the state of Minnesota has a limit of \$20,000.³

The effect of inflation over more than 30 years means current administrative penalties are not high enough to adequately deter noncompliance. For example, manure releases have an average penalty of merely \$4,000; for a large facility, that is little more than the cost of doing business and does little to deter noncompliance. It is less expensive for a regulated party to violate the law than to pass the cost of pollution on to the public and pay a small fee. An increased cap would allow DNR to conduct more enforcement through the administrative process, rather than using

¹ See ARC 3162A, Iowa Admin. Bulletin, July 8, 1992, at 21, available at <https://www.legis.iowa.gov/docs/publications/IACB/854803.pdf>.

² See "CPI Inflation Calculator," U.S. Bureau of Labor Statistics, available at https://www.bls.gov/data/inflation_calculator.htm (last visited June 23, 2023) (comparing July 1992 to May 2023).

³ MINN. STAT. § 116.072.

additional state resources to initiate a civil action. It also allows penalties to better reflect the potential economic benefits to regulated parties of noncompliance and the costs to the public from the pollution that results. The EPC should adopt a higher cap for administrative penalties.

DNR must carry out adequate enforcement to protect air and water quality for all Iowans. As discussed in comments submitted on June 15, 2023, regarding chapter 65 rules,⁴ poor water quality has significant economic impact on Iowans across the state. We encourage DNR to adopt the changes above to ensure compliance with its rules.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt
Staff Attorney
Iowa Environmental Council

/s/ Alicia Vasto

Alicia Vasto
Water Program Director
Iowa Environmental Council

⁴ See “Joint AFO Comments,” IEC et al. (June 15, 2023), at pp. 6-13, available at <https://www.iaenvironment.org/webres/File/Joint%20Comments%20on%202023%20CAFO%20rules.pdf>.