



## City Attorney's Office

---

515 Clark Avenue, P. O. Box 811  
Ames, IA 50010

Phone: 515-239-5146 • Fax: 515-239-5142

September 4, 2009

The Honorable Ann H. Campbell, Mayor,  
and Members of the City Council  
of the City of Ames, Iowa

Re: Engagement of Counsel to Provide Advice on Issues Related to Clean Air Act

Dear Mayor Campbell and Council Members:

After consulting with the staff of Electric Services about several projects that are scheduled to be undertaken in the next several years, I am recommending that the City retain legal counsel with expertise in the Federal Clean Air Act and other environmental regulatory issues. Due to the technical complexity of the anticipated projects and the ever-changing regulatory landscape, the City would benefit from the advice of a legal specialist.

The City of Ames electric utility owns and operates four (4) electric generating units, two (2) coal/RDF-fired steam units, and two (2) fuel oil-fired combustion turbines. The steam units are Unit 7, operational in 1967 and rated at 33 megawatts, and Unit 8, operational in 1982 and rated at 65 megawatts. The combustion turbines are GT1, operational in 1972 and rated at 19 megawatts, and GT2, operational in 2005 and rated at 29 megawatts.

Over the next five years, Electric Services has identified and budgeted for a number of projects at the steam electric plant and the combustion turbines to preserve their asset value and performance, and to maintain compliance with state and federal environmental regulations. Many of these projects will likely require submission of New Source Review (NSR) and Prevention of Significant Deterioration (PSD) applications to the Iowa Department of Natural Resources (Iowa DNR) for their determination before proceeding. A summary discussion of NSR and PSD follows.

In 1977, Title I of the Clean Air Act (CAA) was amended to include what is known as the New Source Review (NSR) permitting program, which includes the Prevention of Significant Deterioration (PSD) permitting process. The basic intent of the amendments is to limit air emissions from facilities by requiring them to go through a permitting process and install

additional controls in facilities where modifications would result in a significant increase in emissions. Fundamentally, the CAA requires an owner or operator of a plant to obtain a PSD permit prior to starting a plant modification project if the project is not “routine maintenance, repair, or replacement” (RMRR) and the project will cause a significant increase in net emissions. RMRR provides an NSR exemption for routine maintenance, repair, and replacement activities if they qualify based upon U.S. EPA’s four-factor test. The four factors are: (1) the nature and extent of the project; (2) the purpose of the project; (3) the frequency of the project (over the life of the facility); and (4) the cost of the project.

Based upon the CAA and on subsequent rulings and interpretations made by various courts involving NSR cases, a plant project will likely require a PSD permit if the project:

- is large in scope
- requires an extensive outage
- costs a significant amount of money (especially if it is defined and budgeted as a capital improvement)
- is not routine (is infrequently performed during the life of the plant)
- extends the life of the plant
- increases the output of the plant
- increases the efficiency of the plant
- increases the availability of the plant
- increases the likelihood that the plant will be operated more than in the past (with an associated increase in emissions as compared to the past).

Given the above interpretation of NSR and PSD, many of the projects that are planned in the next three to five years will require careful evaluation for the need of NSR and PSD permitting. A law firm specializing in federal environmental regulatory compliance issues would be able to advise the City on these projects in a cost-effective manner that could avoid unnecessary delays.

After receiving recommendations from other public power agencies and reviewing the qualifications of specialized law firms, Brian Trower and I interviewed Leslie Ritts of the Ritts Law Group of Alexandria, Virginia. We determined that Ms. Ritts has superb qualifications and would be able to provide legal assistance as needed by the City of Ames. Because the City has a number of different projects over the next several years, I am unable to provide an estimated cost for legal services. The hourly rate \$350 for Ms. Ritts’ services is competitive and is significantly less than other specialized firms that we considered.

I am requesting authorization to enter into an engagement and retainer agreement with Ritts Law Group for legal services in an initial amount of up to one hundred thousand dollars (\$100,000).

Yours truly,

Douglas R. Marek  
City Attorney

c: Don Kom, Duane Pitcher