

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310, and 455D.3, the Environmental Protection Commission hereby amends Chapter 101, “Solid Waste Comprehensive Planning Requirements,” Iowa Administrative Code.

These amendments are made to aid in clarification and ease of use of these rules and in order to correct inconsistencies between the Code of Iowa and the Iowa Administrative Code. The amendments were written by the Department largely due to suggested revisions received from stakeholders throughout the most recent cycle of solid waste comprehensive plan submittals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7310B**. A public hearing to receive comments on the proposed amendments was held on November 25, 2008. The initial comment period, scheduled to end on November 25, 2008, was extended until May 12, 2009, by an Amended Notice of Intended Action published in the Iowa Administrative Bulletin on April 22, 2009, as **ARC 7728B**, which afforded additional opportunities for the public to submit comments and added a second public hearing. Eight organizations commented on the proposed amendments during the public comment period. The following changes were made in response to the public comments received:

- The exclusion from goal progress calculations for contaminated soils has not been stricken from the rules as some contaminated soils cannot be feasibly remediated to a point at which they are exempt from regulation; leaving this exemption in rule will maintain an incentive for brownfield and contaminated site cleanup projects. As a result of this change, the definition for “contaminated soil” has not been rescinded. To provide additional clarification, the removal of contaminated soils as part of a brownfield or contaminated site cleanup was included as an event that should not negatively affect a planning area’s goal progress calculation.

- The phrase “construction and demolition debris” has been stricken from the definition of “monowaste facility” as construction and demolition debris is a non-homogeneous material arising from a variable input stream, and not akin to waste streams like cement kiln dust, foundry sand and coal combustion residue.

- A new definition for “municipal solid waste sanitary disposal project” has been added to clarify to which facilities comprehensive planning requirements apply.

- For clarification, a correction of an inconsistency between the Code of Iowa and the Iowa Administrative Code was made with respect to comprehensive planning requirements and solid waste transfer stations transporting waste out of state for disposal.

These amendments are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.306, 455B.310, and 455D.3.

These amendments shall become effective September 16, 2009.

The following amendments are adopted.

ITEM 1. Amend rule 567—101.1(455B,455D) as follows:

**567—101.1(455B,455D) Purpose and applicability.**

~~101.1(1) Purpose.~~ The purpose of these rules is to provide general definitions and direction for comprehensive integrated solid waste management planning for every city and county of this state and to provide an orderly and efficient process for the assessment and collection of fees for the disposal of solid waste at a sanitary landfill.

~~101.1(2) Applicability.~~ This chapter is intended to implement Iowa Code sections 455B.306, subsection 1 through subsection 5, and subsection 6, paragraph “e,” 455B.301A and 455D.3.

~~101.1(3) Authority.~~ Rescinded IAB 6/8/05, effective 7/13/05.

ITEM 2. Amend rule ~~567—101.2(455B,455D)~~, definitions of “Monowaste facility,” “Planning cycle” and “Solid waste,” as follows:

“*Monowaste facility*” means any permitted facility with special permit provisions which limit the site to a single solid waste including, but not limited to, coal combustion residue, ~~construction and demolition debris~~, cement kiln dust and foundry sand.

“*Planning cycle*” means the length of time between the due date for each comprehensive plan update submittal as approved by the department, which ~~is the same frequency as sanitary disposal project permitting~~ shall be five years effective March 1, 2011.

“*Solid waste*” means ~~garbage, refuse, rubbish, and other similar discarded solid or semisolid materials including, but not limited to, such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles as defined by Iowa Code section 321.1, subsection 90. However, division IV of Iowa Code chapter 455B does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal project. Solid waste does not include hazardous waste as defined in Iowa Code section 455B.411 or source, special nuclear, or by product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979, or petroleum contaminated soil which has been remediated to acceptable state or federal standards has the same meaning as found in Iowa Code section 455B.301. Pursuant to Iowa Code section 455B.301, the department has determined that solid waste includes those wastes exempted from federal hazardous waste regulation pursuant to 40 CFR 261.4(b), as amended through September 16, 2009, except to the extent that any such exempted substances are liquid wastes or wastewater.~~

ITEM 3. Rescind the definition of “Sanitary disposal project” in rule ~~567—101.2(455B,455D)~~.

ITEM 4. Adopt the following new definition of “Municipal solid waste sanitary disposal project” in rule ~~567—101.2(455B,455D)~~:

“*Municipal solid waste sanitary disposal project*” means all facilities and appurtenances, including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of household waste without creating a significant hazard to the public health or safety, and which are approved by the executive director. A municipal solid waste sanitary disposal project also may receive other types of RCRA Subtitle D wastes, such as construction and demolition debris and commercial and industrial solid waste.

ITEM 5. Amend rules ~~567—101.2(455B,455D)~~, ~~567—101.4(455B,455D)~~, ~~567—101.5(455B,455D)~~, ~~567—101.7(455B,455D)~~, and ~~567—101.12(455B,455D)~~ to ~~567—101.14(455B,455D)~~ by replacing “sanitary disposal project” wherever it appears with “municipal solid waste sanitary disposal project.”

ITEM 6. Amend rule ~~567—101.3(455B,455D)~~ as follows:

~~567—101.3(455B,455D)~~ **Waste management hierarchy.** The state’s waste management hierarchy is listed in descending order of preference:

1. Volume reduction at the source;
2. Recycling and reuse, including composting;
3. Combustion with energy recovery;
- ~~3- 4.~~ Other approved techniques of solid waste management including, but not limited to, combustion with energy recovery, combustion for waste disposal, and disposal in sanitary landfills.

ITEM 7. Amend rule ~~567—101.7(455B,455D)~~, introductory paragraph, as follows:

~~567—101.7(455B,455D)~~ **Base year adjustment method.** ~~Using the base year adjustment method, the department will perform a goal progress calculation 12 months prior to the due date of the comprehensive plan update for each planning cycle. This goal progress calculation provided 12 months prior to the due date of the comprehensive plan update is for planning purposes only and is to be used to evaluate progress~~

~~toward the state's waste volume reduction and recycling goals.~~ Planning agencies may request that the department complete a goal progress recalculation once per fiscal year to resolve any discrepancies and to further evaluate progress toward the state's waste volume reduction and recycling goals. At the time of approval of a comprehensive plan or comprehensive plan update, the department will use the most current complete fiscal year data set available to complete goal progress calculations, which will be used to meet the requirements outlined in subrule 101.13(8) and rule 567—101.14(455B,455D).

ITEM 8. Amend subrule 101.7(3), introductory paragraph, as follows:

**101.7(3)** Waste generated as part of an exceptional event or contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation.

ITEM 9. Amend rule 567—101.8(455B,455D) as follows:

**567—101.8(455B,455D) Submittal of initial comprehensive plans and comprehensive plan updates.** Initial comprehensive plans and comprehensive plan updates filed with the department must include a signed electronic submission certificate, which can be printed ~~once~~ when all online forms have been submitted to the department for review. When hard-copy portions of the initial comprehensive plan or comprehensive plan update are submitted to the department, ~~an original and two copies are only one original copy is necessary.~~ Initial comprehensive plans and comprehensive plan updates are required to be double-sided and cannot be submitted in three-ring binders. Comprehensive plan updates shall be submitted in accordance with the schedule, as provided by the department 12 months prior to the due date of the first comprehensive plan update for each planning cycle. Planning agencies are not required to submit hard copies of the online forms for comprehensive plan ~~update~~ updates.

ITEM 10. Rescind subrules **101.10(1)** and **101.10(4)**.

ITEM 11. Renumber subrules **101.10(2)** and **101.10(3)** as **101.10(1)** and **101.10(2)**.

ITEM 12. Amend rule 567—101.12(455B,455D) as follows:

**567—101.12(455B,455D) Solid waste comprehensive plan categories types.** ~~Public or private entities A city, county, or private agency operating or planning to operate a municipal solid waste sanitary disposal project in Iowa, in conjunction with all local governments using the sanitary disposal project,~~ shall file with the director one of two ~~categories types~~ categories types of comprehensive plans detailing the method by which the ~~public or private entity, in conjunction with all local governments using the sanitary disposal project,~~ city, county, or private agency will comply with solid waste comprehensive planning requirements. The first ~~category type~~ category type is a comprehensive plan in which ~~municipal~~ solid waste is disposed of in a sanitary landfill within the planning area. The second ~~category type~~ category type is a comprehensive plan in which all ~~municipal~~ solid waste is consolidated at<sub>2</sub> and transported from<sub>2</sub> a permitted transfer station for disposal at a sanitary landfill in another comprehensive planning area or state.

**101.12(1)** A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses instead to use a municipal solid waste sanitary landfill in another planning area ~~that may choose to retain its autonomy as long as the sanitary landfill in the other planning area complies with all the requirements under Subtitle D of the federal Resource Conservation and Recovery Act, with of this chapter, and all solid waste generated within the planning area being closing its landfills is consolidated at<sub>2</sub> and transported from<sub>2</sub> a permitted transfer station, may elect to retain autonomy as a planning area and.~~ For purposes of this subrule, a planning area closing its own landfills that chooses to retain its autonomy shall not be required to join the planning area where the that contains the landfill being used it is using for final disposal of its solid waste is located.

**101.12(2)** If a planning area ~~makes the election~~ chooses to retain autonomy ~~under subrule 101.12(1) pursuant to this rule,~~ the planning area receiving the solid waste from the planning area ~~making the election~~ sending it shall not be required to include the ~~planning area making the election in a sending planning area in its~~ comprehensive plan provided that no services other than the acceptance of solid waste for disposal are shared between the two planning areas ~~other than the acceptance of solid waste~~

for sanitary landfill disposal. The A planning area receiving the solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs ~~in the planning area receiving the solid waste within that planning area.~~

**101.12(3)** If the department determines that solid waste cannot reasonably be consolidated and transported from a particular transfer station (e.g., asbestos or bulky construction and demolition waste), the department may establish permit conditions to address the transport and disposal of the solid waste. ~~An election may be made under this subrule~~ A planning area sending solid waste for disposal in another planning area may retain autonomy pursuant to subrule 101.12(1) only if the two both comprehensive planning areas enter into an agreement, pursuant to Iowa Code chapter 28E, that includes, at a minimum, all both of the following:

*a.* and *b.* No change.

ITEM 13. Amend rule ~~567—101.13(455B,455D)~~, second unnumbered paragraph, as follows:

If it is demonstrated to the department that any of the provisions outlined in paragraphs “1” through “3” below will not impact the planning area significantly, then the department may consider accepting a comprehensive plan amendment. ~~This chapter also provides the comprehensive planning requirements that apply to composting, recycling, processing, monowaste, monogenerator, and transfer station, and medical waste incineration facilities.~~ If during the planning cycle a change occurs to an existing planning area, the submission of an initial comprehensive plan may be required. An initial comprehensive plan is needed if:

ITEM 14. Amend subrule 101.13(2), catchwords, as follows:

**101.13(2)** *Comprehensive plan updates*: ~~for permitted municipal solid waste landfills, construction and demolition waste disposal sites, and transfer stations~~ sanitary disposal projects.

ITEM 15. Rescind and reserve subrules **101.13(3)** to **101.13(6)**.

ITEM 16. Amend subrule 101.14(2) as follows:

**101.14(2)** *Exclusions* Exclusion.

~~*a.* —The fees specified in subrule 101.14(3) do not apply to construction and demolition waste disposed of in an area of a sanitary landfill that has been designated exclusively for the disposal of construction and demolition waste based on plans and specifications approved by the department; or to solid waste disposal facilities with special permit provisions which limit the site to the management of landscape waste and to disposal of coal combustion waste, cement kiln dust, construction and demolition waste and foundry sand; or to solid waste materials approved by the department for lining or capping or constructing berms, dikes or roads in the project.~~

~~*b.* Fees do not apply to wastes which will not be buried at a sanitary landfill if such material is salvaged or recycled in accordance with the provisions of the landfill permit.~~

ITEM 17. Amend ~~567—Chapter 101~~, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.304, 455B.306, and 455D.7 455D.3.

[Filed 7/23/09, effective 9/16/09]

[Published 8/12/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/12/09.