

CHAPTER 1215**SOLID WASTE***H.F. 2205*

AN ACT relating to solid waste and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 28G.1, Code 1991, is amended to read as follows:
28G.1 PURPOSE.

The purpose of this chapter is to allow two or more local governments to form a public service monopoly when they find that a public service monopoly is an effective means to protect the public health and welfare, and the environment through adequate any of the following:

1. Adequate solid waste collection, transportation, storage and disposal practices and is which are the only effective means of allowing the construction and utilization of a resource recovery facility for the recycling of solid waste for use as an energy source.

2. The implementation of other solid waste management projects, such as source reduction and recycling, which are part of an approved comprehensive plan required under section 455B.306, and if the formation of a public service monopoly is the only effective means of accomplishing solid waste reduction and recycling. The public service monopoly shall utilize private recycling industries in the service area when possible.

Sec. 2. Section 28G.2, Code 1991, is amended by adding the following new subsection:
NEW SUBSECTION. 3. "Solid waste management project" means a project which is part of the comprehensive plan, approved by the director of the department of natural resources pursuant to section 455B.306, to establish and implement the comprehensive solid waste reduction program of a city or county.

Sec. 3. Section 28G.3, Code 1991, is amended to read as follows:
28G.3 CREATION OF PUBLIC SERVICE MONOPOLY.

If two or more local governments find that the only effective means of allowing the construction and utilization of a resource recovery facility for the recycling of solid waste for use as an energy source or to implement solid waste management projects as defined in section 28G.2 is to create a public service monopoly, a legal entity shall be created pursuant to chapter 28E by agreement of two or more local governments to displace competition with regulation and monopoly of a public service for the collection, transportation, storage, and disposal, or diversion of solid waste to the extent reasonably necessary to carry out these functions. The agreement is subject to approval of the environmental protection commission before it becomes effective.

Sec. 4. Section 28G.4, subsections 3 and 4, Code 1991, are amended to read as follows:

3. Enter into contracts for construction and may contract, license, or permit the construction of resource recovery facilities for recycling of solid waste for an energy source or of facilities necessary to implement solid waste management projects as defined in section 28G.2.

4. Require the use of the resource recovery facilities or of facilities necessary to implement solid waste management projects as defined in section 28G.2, by any person who can be effectively served by the facilities. However, this subsection does not prohibit a private agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining, or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules promulgated adopted by the environmental protection commission or local boards of health or local ordinances.

Sec. 5. Section 455B.304, Code 1991, is amended by adding the following new subsections:
NEW SUBSECTION. 16. The commission shall adopt rules which require all sanitary landfills in which the tonnage fee pursuant to section 455B.310 is imposed, to install scales by January 1, 1994.

NEW SUBSECTION. 17. The commission shall adopt rules which prohibit the land application of petroleum contaminated soils on flood plains.

Sec. 6. Section 455B.305, subsection 6, Code 1991, is amended to read as follows:

6. Beginning July 1, 1992, the director shall not issue, ~~renew, or reissue~~ a permit for a sanitary landfill unless the sanitary landfill is equipped with a leachate control system. Beginning July 1, 1994, the director shall not renew or reissue a permit for an existing sanitary landfill unless the sanitary landfill is equipped with a leachate control system. During the period from July 1, 1992, through June 30, 1994, the director may require an existing sanitary landfill to install a leachate control system if leachate from the sanitary landfill is adversely impacting the public health or safety or the environment. During the period from July 1, 1992, through June 30, 1994, the director shall require an existing sanitary landfill to install a leachate control system if the sanitary landfill has not submitted a completed hydrogeological plan to the department. The director may exempt a permit applicant from ~~this requirement~~ these requirements if the director determines that certain conditions regarding, but not limited to, existing physical conditions, topography, soil, geology, and climate, are such that a leachate control system is unnecessary.

Sec. 7. Section 455B.306, subsection 1, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A completed plan for the control and treatment of leachate, submitted to meet the requirements of section 455B.305, subsection 6, shall be reviewed by the director, and the director shall reject, suggest modifications, or approve the completed plan within six months of submittal of the plan. If no action is taken within the six-month period, the plan shall be considered approved. However, the director may require updating of the plan at the time of renewal or reissuance of a previously issued permit.

Sec. 8. Section 455B.306, subsection 5, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. A description of the service area to be served by the city, county, or private agency under the comprehensive plan. A comprehensive plan shall not include a service area, any part of which is included in another comprehensive plan.

Sec. 9. Section 455B.306, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 8. If a city, county, or private agency does not incorporate the elements of the solid waste hierarchy of the state solid waste management policy in a proposed initial or adopted comprehensive plan, the city council or county board of supervisors governing the city or county in which the sanitary landfill is proposed to be located or is located shall hold a public hearing to address the basis for not including any of the elements in the plan.

NEW SUBSECTION. 9. A city council or county board of supervisors governing the area in which a sanitary disposal project is proposed to be located or is located shall hold a public hearing to address the issue of including or not including local curbside recycling in the comprehensive plan.

Sec. 10. **NEW SECTION. 455B.307A DISCARDING OF SOLID WASTE – PROHIBITIONS – PENALTY.**

1. For the purposes of this section, “discard” means to place, cause to be placed, throw, deposit, or drop.

2. A person shall not discard solid waste onto or in any water or land of the state, or into areas or receptacles provided for such purposes which are under the control of or used by a person who has not authorized the use of the receptacle by the person discarding the solid waste.

3. A person who violates this section is subject to a civil penalty not to exceed five hundred dollars for each violation.

Sec. 11. Section 455B.310, subsection 2, paragraph a, Code Supplement 1991, is amended to read as follows:

a. The tonnage fee is twenty-five cents per ton of solid waste. However, for the year beginning July 1, 1988, the tonnage fee is one dollar and fifty cents per ton of solid waste and shall increase annually in the amount of fifty cents per ton through July 1, 1992. A county in which a privately operated landfill accepts solid waste from outside of the county may charge an additional tonnage fee for disposal of solid waste at the sanitary landfill which is not more than one hundred percent of the fee otherwise established in this section. The additional fee charged and the moneys collected shall be used exclusively for the development and implementation of alternatives to sanitary landfills or for the costs incurred by the county to abate problems associated with the operation of the sanitary landfill. A city, county, or private agency which files a comprehensive plan to operate a sanitary landfill under section 455B.306 and which accepts solid waste from a service area not included in but contiguous to the service area included in the comprehensive plan, shall charge a tonnage fee for the disposal of that solid waste which is at least the amount of the current tonnage fee charged by the sanitary landfill representing the receiving service area or the sanitary landfill representing the service area from which the solid waste originated, whichever amount is greater. A sanitary landfill which accepts solid waste from a service area not included in and not contiguous to the service area included in the comprehensive plan shall charge a tonnage fee for the disposal of the solid waste which is three hundred percent of the fee otherwise established in this section. The additional fee charged and the moneys collected shall be used in accordance with section 455E.11, subsection 2, paragraph "a", subparagraph (1), subparagraph subdivision (b).

Sec. 12. Section 455B.310, subsection 10, Code Supplement 1991, is amended by striking the subsection and inserting in lieu thereof the following:

10. a. Notwithstanding the tonnage fee schedule prescribed under subsection 2, foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for other purposes defined as beneficial uses by rule of the department is exempt from imposition of the tonnage fee imposed under this section.

b. Sanitary landfills shall use foundry sand for beneficial uses as defined by rule of the department as a replacement for earthen material, if the foundry sand is generated by a foundry located within the state and if the foundry sand is provided to the sanitary landfill at no cost to the sanitary landfill.

Sec. 13. Section 455B.311, Code 1991, is amended by adding the following new subsection:
NEW SUBSECTION. 3A. Grants shall not be awarded to a city, county, or central planning agency if the entity has not submitted a completed hydrogeological plan to the department.

Sec. 14. Section 455C.16, Code Supplement 1991, is amended to read as follows:
455C.16 BEVERAGE CONTAINERS — DISPOSAL AT SANITARY LANDFILL PROHIBITED.

Beginning July 1, 1990, the final disposal of beverage containers by a dealer, distributor, or manufacturer, or person operating a redemption center, in a sanitary landfill, is prohibited, except for beverage containers containing alcoholic liquor as defined in section 123.3, subsection 8. Beginning September 1, 1992, the final disposal of beverage containers used to contain alcoholic liquor as defined in section 123.3, subsection 8, by a dealer, distributor, or manufacturer, or person operating a redemption center in a sanitary landfill, is prohibited.

Sec. 15. NEW SECTION. 455D.10A HOUSEHOLD BATTERIES — HEAVY METAL CONTENT AND RECYCLING REQUIREMENTS.

1. DEFINITIONS. As used in this section and in section 455D.10B unless the context otherwise requires:

a. "Button cell battery" means a household battery which resembles a button or coin in size and shape.

b. "Consumer" means a person who purchases household batteries for personal or business use.

c. "Easily removed" means a battery or battery pack which can be removed from a battery-powered product by the consumer, using common household tools.

d. "Household battery" means any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.

e. "Institutional generator" means a governmental, commercial, industrial, communications, or medical facility which generates waste mercuric oxide, nickel-cadmium, or sealed lead acid rechargeable batteries.

f. "Rechargeable consumer product" means a product that is primarily powered by a rechargeable battery and is primarily used or purchased to be used for household purposes.

g. "Rechargeable household battery" means a small sealed nickel-cadmium or sealed lead acid battery used for nonvehicular purposes and weighing less than twenty-five pounds, which can be recharged by the consumer and reused.

2. MERCURY CONTENT LIMITED. Beginning July 1, 1993, a person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese battery that contains more than twenty-five one-thousandths of a percent mercury by weight, or a button cell battery which contains more than twenty-five milligrams of mercury. Effective January 1, 1996, a person shall not sell, distribute, or offer for sale at retail in this state an alkaline manganese household battery to which mercury has been added.

3. RECYCLING/DISPOSAL REQUIREMENTS FOR HOUSEHOLD BATTERIES.

a. Beginning July 1, 1996, a system or systems shall be in place to protect the health and safety of Iowans, and the state's environment, from the toxic components of used household batteries. The system or systems shall include at least one of the following elements:

(1) Elimination or reduction to the extent established by rule of the department, of heavy metals and other toxic components in nickel-cadmium, mercuric oxide, or sealed lead acid household batteries, to ensure protection of public health, safety, and the environment when placed in or disposed of as part of mixed municipal solid waste.

(2) Establishment of a comprehensive recycling program for each type of battery listed in subparagraph (1) that is sold, distributed, or offered for sale in this state. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph "c" or "d", shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for the recycling of used batteries in an environmentally sound manner.

(3) Provision for collection, transporting, and proper disposal of used household batteries of the types listed in subparagraph (1) which are distributed, sold, or offered for retail sale in the state. For the purposes of this paragraph, "proper disposal" means disposal which complies with all applicable state and federal laws. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph "c" or "d", shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for proper disposal of the used batteries.

b. To meet the recycling and disposal requirements of this subsection, participants in the systems established under this subsection, either individually or collectively, shall do all of the following:

(1) Identify a collection entity, other than a local government collection system, unless the local government agrees otherwise, through which the discarded batteries listed in paragraph "a", subparagraph (1) shall be returned for collection and recycling or disposal.

(2) Inform each customer of the prohibition of disposal of batteries listed in paragraph "a", subparagraph (1), and a safe and convenient return process available to the customer for recycling or proper disposal.

c. After July 1, 1996, nickel-cadmium, sealed lead acid, or mercuric oxide household batteries shall not be sold, distributed, or offered for sale in the state, unless a system required by this section is in operation.

d. The department may make recommendations to the commission to include other types of household or rechargeable batteries, not enumerated in paragraph "a", subparagraph (1), in the requirements of this subsection.

e. This subsection does not apply to batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.

4. RULES ADOPTED. The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this section pursuant to chapter 17A.

5. PENALTIES. A person violating a provision of this section is subject to a civil penalty of not more than ten thousand dollars per day of violation.

Sec. 16. NEW SECTION. 455D.10B BATTERIES USED IN RECHARGEABLE CONSUMER PRODUCTS.

1. A person shall not distribute, sell, or offer for retail sale in the state a rechargeable consumer product manufactured on or after January 1, 1994, unless all of the following conditions are met:

a. The battery can be easily removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed.

b. The product, the battery, and the product package are clearly labeled to indicate that the battery must be recycled or disposed of properly, and meets the requirements of the international standards organization (ISO 7000-1135) recycling symbol which includes the designation "Cd" for nickel-cadmium batteries and "Pb" for small lead batteries.

2. A rechargeable consumer product manufacturer may apply to the department for exemption from the requirements of subsection 1 if any of the following apply:

a. The product cannot be redesigned or manufactured to comply with the requirements prior to January 1, 1994.

b. The redesign of the product to comply with the requirements would result in significant danger to public health and safety.

c. The battery poses no unreasonable hazard to public health, safety, or the environment when placed in and processed or disposed of as part of mixed municipal solid waste, pursuant to section 455D.10A.

d. The consumer product manufacturer has in operation a program to recycle used batteries in an environmentally sound manner.

3. An exemption granted by the department under subsection 2, paragraph "a" is limited to a maximum of two years, but may be renewed.

Sec. 17. NEW SECTION. 455D.20 LOCAL ORDINANCE – CURBSIDE COLLECTION.

A city council or county board of supervisors which provides for the collection of solid waste by its residents shall consider as a proposed ordinance, the mandatory curbside collection of recyclable materials which have been separated from other solid waste. The proposed ordinance shall be considered in accordance with chapter 331 or 380.

Sec. 18. Section 455E.11, subsection 2, paragraph a, Code Supplement 1991, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (14) Notwithstanding the limitations of use of the fees imposed under section 455B.310 and retained by a city, county, public agency, or private agency under this section, moneys retained by the city, county, public agency, or private agency may be used to defray the cost of installation of a scale at a sanitary landfill or to defray the costs of closure of the sanitary landfill, the costs related to the establishment of a transfer station, or the costs of a hydrogeological plan.

Sec. 19. Sections 455D.17 and 455D.18, Code 1991, are repealed.

Sec. 20. **LEACHATE CONTROL STUDY.** The department shall conduct a study to determine the most efficient leachate control technology available or under development and shall make recommendations to the general assembly by January 15, 1993, regarding leachate control requirements for existing landfills for which no negative environmental impact has been demonstrated.

Approved May 19, 1992

CHAPTER 1216

REGULATION OF AQUACULTURE

H.F. 2334

AN ACT relating to the regulation of aquaculture by the department of natural resources, and by providing penalties for violations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 109.1, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 27. "Aquaculture" means the controlled propagation, growth, and harvest of aquatic organisms, including, but not limited to fish, amphibians, reptiles, mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.

NEW SUBSECTION. 28. "Aquaculturist" means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.

NEW SUBSECTION. 29. "Aquaculture unit" means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.

NEW SUBSECTION. 30. "Commercial purposes" means selling, giving, or furnishing to others.

NEW SUBSECTION. 31. "Private waters for aquaculture" means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.

Sec. 2. Section 109.2, Code 1991, is amended to read as follows:

109.2 STATE OWNERSHIP AND TITLE — EXCEPTIONS.

The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other land and waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, and all other wildlife, found in the state, whether game or non-game, native or migratory, except deer in parks and in public and private preserves, the ownership of which was acquired prior to April 19, 1911, are hereby declared to be in the state, except as otherwise provided in this chapter provided. The title and ownership of all fish aquatic organisms in private fish hatcheries, as defined in section 109.64, aquaculture units and private aquacultural waters shall be in private persons.

Sec. 3. **NEW SECTION. 109.141 AQUACULTURE — LICENSE REQUIRED.**

1. A person shall not engage in the business of aquaculture until that person has applied for and has been issued an aquaculture unit license from the department. The application period extends from January 1, or the date of the application, through December 31. A license shall not be issued to operate an aquaculture unit on private or nonmeandered lakes and streams