



## Department of Natural Resources

### Five-Year Rule Review Worksheet

#### Phase 2 - Part C

#### BASIC INFORMATION

Date Part C Review Concluded: December 1, 2014

Reviewer Name(s): Chad Stobbe, Susan Johnson, Theresa Stiner, Amie Davidson

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Chapter<sup>1</sup> Number: Chapter 102

Chapter Name: Permits

#### 1. DOES THIS CHAPTER<sup>2</sup> DO THE JOB IT SETS OUT TO DO?

1a. Is this chapter effective at protecting the health, welfare, and safety of Iowans and our natural resources?

Yes  No  (check or circle)

1b. Explain how the chapter protects the health, welfare, and safety of Iowans and our natural resources.

The intent of this administrative chapter was to provide a singular location to outline the minimum permit application and general operating requirements for all sanitary disposal projects (SDP). The requirements of this administrative chapter serve as the basis of information to include in a facility's permit, which provides the DNR and the public with information on who, what and how solid waste materials are being managed at a site.

Over time, many of these permit application and general operating requirements have been updated and incorporated into subsequent solid waste administrative chapters that are more

<sup>1</sup> If the Phase 1 Worksheet addresses a portion of a chapter, rather than a whole chapter, then this follow-up worksheet should address the same portion of the chapter (e.g. rule or rules, paragraph, etc.).

<sup>2</sup> Throughout this worksheet, the word "chapter" is meant to apply to the chapter or portion of a chapter to which the worksheet applies.

directly associated with the specific facility types and waste streams being managed. This has resulted in duplication and inconsistencies within many administrative chapters, and at times conflicting provisions. This creates confusion on behalf of permit applicants in not clearly knowing what must be submitted in a complete permit application. It should be noted that while this administrative chapter is specific to SDPs, the DNR has the statutory authority to issue permits to other facilities and operations (e.g. composting, discarded appliance demanufacturing, land application) that manage solid waste.

## 2. IS THERE LEGAL AUTHORITY FOR THIS CHAPTER?

2a. Is the chapter intended to implement any state statutes?

Yes  No  (check or circle)

*If this chapter is intended to implement any state statutes, then answer questions 2b and 2c. If not, then proceed to question 2d.*

2b. Provide citations for the specific provisions of the Iowa Code implemented by this chapter.

[Iowa Code section 455B.304](#) - 455B.304(1) and 455B.304(8)

[Iowa Code section 455B.305](#) - 455B.305(1)

[Iowa Code section 455B.306](#) - 455B.306(7)“a”, “c” and “d” & 455B.306(9)“a”, “c”, “d” and “e”

[Iowa Code section 455B.307](#) - 455B.307(1)

2c. Provide a narrative summary of how the state statutes are implemented by this chapter.

Iowa Code section 455B.304(1) states that the commission shall establish rules for the administration of the laws pertaining to solid waste management. While there are specific rules within this administrative chapter that have direct statutory authority, many requirements are based upon the broad authority given under Iowa Code section 455B.304(1) to adopt rules for the proper administration of Division IV “Solid Waste Disposal,” Part 1 “Solid Waste.” Within the examples given in Iowa Code section 455B.304(1) is the authority to establish rules for “the issuance of permits” and for the “general operation and maintenance” of SDPs. In addition, Iowa Code section 455B.305(1) provides further statutory authority for the issuance of SDP permits by the DNR. Iowa Code sections 455B.304(8) and 455B.306(7) require the DNR to establish rules regarding proper site closure and postclosure care, emergency response planning and financial assurance coverage requirements applicable to SDPs. Iowa Code section 455B.307(1) addresses illegal dumping and provides the DNR with some allowance for variance so long as the public interest is best served.

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2d. Does the chapter implement any **federal statutes or regulations**?

Yes  No  **(check or circle)**

*If this chapter is intended to implement any federal statutes or regulations, then answer questions 2e and 2f. If not, then proceed to question 3.*

2e. Provide citations for the specific provisions of federal statutes and regulations implemented by this chapter.

Not Applicable

2f. Provide a summary of how federal statutes and regulations are implemented by this chapter.

Not Applicable

### 3. DOES THE CHAPTER GO BEYOND FEDERAL LEGAL REQUIREMENTS?

3a. Is this chapter more stringent than federal statutory or regulatory requirements?

Yes  No  Not Applicable  **(check or circle)**

*If the answer is "yes," then answer question 3b. If not, then proceed to question 4.*

3b. Provide a narrative statement regarding how this chapter is more stringent than required by federal statutes and regulations, and a short justification of why it is more stringent.

Not Applicable

### 4. DOES THIS CHAPTER HAVE UNINTENDED CONSEQUENCES?

4a. Does the chapter result in the equitable treatment of those required to comply with it?

Yes  No  **(check or circle)**

4b. Provide a narrative summary of your response.

For any public or private entity deemed to require an SDP permit for their solid waste management activities, the provisions of this chapter are applied equally to all.

4c. Does the chapter result in the inequitable treatment of anyone affected by the chapter but not required to comply with it?

Yes  No  **(check or circle)**

4d. Provide a narrative summary of your response.

None Known

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4e. Are there known negative unintended consequences of this chapter?

Yes  No  (check or circle)

*If the answer is "yes," then answer question 4f. If not, then proceed to question 5.*

4f. Specifically state the nature of any negative unintended consequences.

This administrative chapter was developed based upon the understanding that the DNR only has the authority to issue SDP permits, and specifies four distinct types of SDP permits. The DNR has applied the requirements of this chapter to facilities which do not meet the statutory definition of an SDP. This misinterpretation of solid waste statutory authority has created unintended consequences for subsequent rulemakings in that almost all facilities managing solid waste (e.g. compost, land application, discarded appliance demanufacturing), regardless of whether or not they meet the statutory definition of an SDP (i.e. to facilitate the final disposition of solid waste), have been required to obtain an SDP permit and abide by certain restrictions applicable to such facilities (e.g. financial assurance).

## 5. CAN THE GOALS OF THE CHAPTER BE ACHIEVED IN A MORE EFFICIENT OR STREAMLINED MANNER?

5a. Is the chapter broader than necessary to accomplish its purpose or objective?

Yes  No  (check or circle)

5b. Provide a narrative summary of your response.

The content of this administrative chapter is not broader than necessary to accomplish its purpose or objective, however in practice, the DNR has applied the requirements of this administrative chapter to facilities which do not meet the statutory definition of an SDP.

This administrative chapter fails to account for all solid waste permitting requirements for which it was originally adopted, and for which statute requires (e.g. financial assurance). In addition, this chapter currently fails to differentiate between the various types of SDPs (e.g. sanitary landfills and solid waste transfer stations); which results in incomplete permit applications and submittals that address provisions not applicable to the proposed solid waste management activity.

The edits and practical alternatives suggested below pertain to opportunities to streamline the permitting process for all SDPs, and to provide improved regulatory clarity to those required to obtain an SDP permit. Expanding upon this administrative permitting chapter would allow those duplicative provisions in subsequent SDP permitting chapters to be rescinded.

5c. Is the purpose of this chapter achieved in the least restrictive manner?

Yes  No  (check or circle)

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5d. Provide a narrative summary of your response.

The primary purpose of this administrative chapter was to have a singular location for all solid waste permitting requirements, but over time many of these same permitting requirements have been incorporated into subsequent solid waste administrative chapters that are more directly associated with the specific facility types and waste streams being managed. This has at times resulted in significant duplication and conflicting regulatory requirements, causing the regulated community and general public to navigate multiple administrative chapters to identify applicable requirements. In addition, the requirements of this administrative chapter are not applicable to all SDPs (e.g. groundwater monitoring plans, leachate control systems). As indicated below, there are several opportunities to streamline the permitting process for all SDPs, thereby reducing the regulatory burden upon prospective permit applicants and current permit holders.

5e. What, if any, reasonable and practical alternatives to this chapter are available by the agency?

- The purpose of this administrative chapter could be achieved in a more efficient manner if the permit application requirements adopted in subsequent solid waste administrative chapters were rescinded, thereby consolidating all permitting provisions (e.g. general operating and closure requirements, application requirements) into a single more comprehensive solid waste administrative chapter. This comprehensive permitting chapter could be applicable to all solid waste management activities, not just those that meet the statutory definition of an SDP. Rescinding duplicative permit application and general operating requirements in subsequent solid waste administrative chapters would improve regulatory clarity, while minimizing the overall length and complexity of Iowa's solid waste regulations.
- Another option, albeit not as streamlined, would be to rescind this administrative chapter in favor of more detailed permitting requirements included within each individual solid waste permitting chapter (SDP or other permit type).
- There are also examples of requirements necessary to obtain a permit within this administrative chapter that could be considered overly prescriptive given the intent of the applicable statutes. A prime example of this is 567 IAC 102.14 titled, "Emergency response and remedial action plans." Its prescriptive requirements limit flexibility, and some emergency response and remedial action plan requirements are not applicable to all SDPs (e.g. waste subsidence at a solid waste transfer station). This is an example of where the enabling statutory language could be adopted verbatim, which would provide greater flexibility in achieving compliance, while ensuring an equivalent level of environmental protection.
- The adoption of "general permits" (authority in Iowa Code section 455B.304(18)) to apply to similar types of solid waste facilities (e.g. solid waste transfer stations, compost facilities), could significantly streamline the application preparation and DNR review

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and approval process.

- Another permitting approach to consider expanding upon is “permit-by-rule,” for those solid waste management activities that may not warrant site specific oversight (e.g. farm waste management, onsite building burial). Extending the permit cycle timeframe beyond the current maximum of three years in 567 IAC 102.2(1), or considering “life-of-facility” permits, both have the potential to reduce a substantial amount of time currently devoted to DNR review of submittals. Those gains made through greater program efficiency could be redirected toward expanded education and technical assistance across solid waste regulatory programs.
- Regardless of which approach is chosen, every effort should be made to discontinue the practice of referencing other administrative chapters for further clarification or additional requirements. Doing so will help resolve areas of redundancy and inconsistency, and ultimately result in a less burdensome environmental framework that should be easier for the regulated public to navigate and for the DNR to administer and enforce.

5f. How do the economic and social costs of various alternatives to this chapter, if known, appear to compare to the known economic costs of this chapter?

The alternatives expressed above would not only streamline the permitting process for permit applicants and the DNR, but would result in reduced costs (particularly at time of permit renewal) realized through those efficiencies. The time and financial resources saved in not having to periodically submit the same permit application documentation to the DNR could be significant, not to mention the shorter timeframe with which the DNR could review and issue permits. These alternatives provide a streamlined regulatory process that maintains an equivalent level of environmental protection, and therefore it’s not expected to result in an increase in cost to either the regulated public or the DNR.

5g. Do the known economic costs of the chapter outweigh the known economic and social benefits?

The numerous duplication and overly prescriptive requirements could be cited in making a case that the costs of this administrative chapter do outweigh its current benefits. In some cases, the cost of obtaining a permit may outweigh the financial benefits of providing that regulated activity. For example, a requirement of every SDP is proof of financial assurance (i.e. the setting aside of funds for proper facility closure), which requires the services of an Iowa-licensed professional engineer to prepare the required permit documents. These costs may be too great for a business that manages small amounts of solid waste (e.g. discarded appliance demanufacturing).

## **6. DOES THE CHAPTER AFFECT BUSINESS OR INDUSTRY?**

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6a. Does the chapter affect businesses operating in Iowa?

Yes  No  (check or circle)

*If the answer is "yes," then answer questions 6b through 6i as applicable. If not, then proceed to question 6f.*

6b. What kinds of businesses are affected by this chapter?

Any public or private agency deemed to require an SDP permit shall comply with this chapter.

6c. Does this chapter create a burden for businesses?

Yes  No  (check or circle)

6d. Explain your response to question 6c.

Iowa Code requires an SDP permit be obtained by any facility that "facilitates the final disposition of solid waste." A broad interpretation has been to require an individual facility permit for most activities involving solid waste management, without consideration of whether final disposition of solid waste is occurring. Upon further review of Iowa law and the regulatory authority granted to the DNR, opportunities to maintain a limited oversight role without the need of an individual facility permit should be further evaluated. It should be noted that the DNR does not currently charge permit fees for the review and issuance of SDP permits. Therefore, costs incurred by the regulated public are the result of permit application development and associated consulting services secured.

*If the answer to question 6c is "yes," then answer question 6e. If not, then proceed to questions 6f through 6i.*

6e. If this rule does create a burden for businesses, what options are available to address those burdens?

While opportunities exist to streamline this administrative chapter, the burden placed upon businesses is in regard to compliance with the minimum requirements to maintain an SDP permit. These minimum requirements are necessary. However as stated above, practical alternatives include the adoption of "general permits" and a broader application of "permit-by-rule," which would result in a more efficient process for the regulated community, without a lessening of environmental protection standards. This streamlining of the permitting process for multiple solid waste management activities would reduce the burden upon businesses in maintaining regulatory compliance.

6f. Do industry standards affect the subject matter of this chapter?

Yes  No  (check or circle)

*If the answer is "yes," answer questions 6g through 6i as applicable. If not, proceed to question 7.*

6g. Have industry standards changed since the adoption of this chapter?

|   |
|---|
| <p>Yes <input type="checkbox"/> No <input type="checkbox"/> (check or circle)</p> <p><i>If the answer is "yes," answer questions 6h and 6i. If not, proceed to question 7.</i></p>  |
| <p>6h. What industry standards have changed since the adoption of this chapter?</p> <p>Not Applicable</p>   |
| <p>6i. Would revision of the chapter be useful in implementing the purposes of the chapter in light of any industry standard revisions? (Cite the portions of the chapter that could be revised.)</p> <p>Not Applicable</p> |

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| <p align="center"><b>7. DOES THIS CHAPTER AFFECT JOB CREATION?</b></p>   |
| <p>7a. Does the chapter affect job creation?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> (check or circle)</p> <p><i>If the answer is "yes," then answer questions 7b and 7c. If not, then proceed to question 8.</i></p> |
| <p>7b. If this chapter affects job creation, in what manner does that occur?</p> <p>Not Applicable</p>   |
| <p>7c. If this chapter is required by state or federal statutes, or federal regulations, how has the department minimized negative job impacts?</p> <p>Not Applicable</p>  |

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| <p align="center"><b>8. IS THERE ANY DOCUMENTATION OR PAPERWORK REQUIRED BY THIS CHAPTER?</b></p>  |
| <p>8a. Is there any documentation or paperwork required by this chapter?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (check or circle)</p> <p><i>If documentation or paperwork is required, then answer questions 8b through 8e. If not, then proceed to question 9.</i></p>  |
| <p>8b. What is the purpose of the documentation or paperwork?</p> <p>The rules within this administrative chapter that require the submittal of paperwork pertain to minimum permit application requirements and subsequent permitting actions, such as an amendment, revocation, and closure. It should be noted that depending upon the type of SDP permit sought, not all provisions within this administrative chapter are required to be submitted for of all SDP permitted activities (e.g. groundwater monitoring plans, leachate</p> |

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control systems).

8c. Who reviews the paperwork required by the chapter?

DNR central office program staff and field office staff review permit applications and management plans to ensure compliance with applicable regulations and that proposed activities are protective of human health and the environment. This minimum application documentation serves as the basis of information to include within a permit issued to a solid waste management facility.

8d. How is the documentation or paperwork required by this chapter informative or useful for the public?

As stated prior, the minimum permit application documentation required in this administrative chapter serves as the basis of information to include in a facility's SDP permit. This provides the DNR and the public with information on who, what and how solid waste materials are being managed at a site. These permit application requirements are vital to the permitting process to ensure proposed solid waste management activities are adequately protective of human health and the environment.

8e. How, if possible, can the documentation or paperwork requirements be reduced?

As stated above, there are several opportunities to streamline the permitting process for solid waste management facilities; either through the adoption of "general permits" or a broader application of "permit-by-rule," which would result in a more efficient process for the regulated community, without a lessening of environmental protection standards. There are also opportunities to restructure and simplify the required management plans that must accompany each permit application submittal. While much of the required paperwork within this administrative chapter is vital to making permitting decisions, changing what and how often that information is submitted to the DNR could significantly reduce the paperwork involved. The level of detail required to obtain a permit should be determined on an individual facility basis, and commensurate with the potential environmental risk associated with the proposed solid waste management activity.

## 9. DO OTHER STATE AGENCIES REGULATE THE ISSUES ADDRESSED BY THIS CHAPTER?

9a. Do any other state agencies regulate any issue(s) addressed by this chapter?

Yes  No  (check or circle)

*If the answer is "yes," then answer questions 9b to 9e. If not, then proceed to question 10.*

9b. If other state agencies regulate any issue(s) addressed by this chapter, provide the name of each agency, a description of how each agency is involved, and specify the subject matter regulated by each agency.)

Not Applicable

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9c. Is there a need for more than one set of rules?

Yes  No  (check or circle)

*If the answer is "yes," then proceed to question 9d. If not, then proceed to question 9e.*

9d. If any other state agencies regulate any issue(s) addressed by this chapter and one or more of the other sets of rules are necessary, explain why.

Not Applicable

9e. If this chapter or a portion thereof is duplicative, explain how and why.

Not Applicable

## 10. IS THE CHAPTER USER FRIENDLY?

10a. Is the chapter written and organized in a clear and concise manner so that those to whom it applies can readily understand it?

Yes  No  (check or circle)

*If the answer is "no," then answer question 10b. If not, then proceed to question 11.*

10b. If not, explain what changes can be made to improve readability, eliminate ambiguity, or increase understanding. Be specific, to the extent possible.

There are several opportunities to consider in addressing the ambiguity within this administrative chapter. They include:

- This chapter initially served as the central location for all administrative requirements regarding solid waste SDP permitting. Over time, many of these provisions have been updated and incorporated into subsequent solid waste permitting chapters that are more directly associated with the specific solid waste management activity undertaken at each facility. As a result, this administrative chapter is incomplete and outdated with regard to how the DNR currently administers certain solid waste permitting programs.

As such, this administrative chapter needs to either be updated so that it can again serve as a single universal permitting chapter that covers all solid waste management activities and permitting types (e.g. individual facility permit, "general permit" and "permit-by-rule"), or rescinded with the applicable permitting provisions incorporated into the remaining solid waste administrative chapters. Doing so will improve the public's understanding of the minimum requirements needed to obtain a permit for their proposed solid waste management activity. If the former is undertaken, it will also reduce the redundancy currently occurring in most solid waste permitting chapters.

- 567 IAC 102.2 outlines the four types of solid waste permits issued by the DNR. However, Iowa Code and subsequent administrative chapters indicate more: 1) SDP, 2)

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developmental permit, 3) temporary permit, 4) research, development and demonstration (RD&D permit), 5) closure permit, and 6) emergency permit. Of these, the temporary permit is authorized by Iowa Code section 455B.307(1), but has seldom been issued by the DNR. Furthermore, 567 IAC 102.2(3) states that a developmental permit may be issued by the DNR, however it's not clear where the DNR has been granted such authority in Iowa Code.

- The primary plan requirements of 567 IAC 102.12 do not mirror those stated in subsequent solid waste administrative chapters. These requirements could be combined and located in a single administrative chapter dedicated to common solid waste permit application and operating requirements.
- There are several instances where requirements that are applicable only to a certain subset of SDPs (e.g. landfills) are included under rules that state in part, "Every application for any permit issued by the department shall include the following" or "...requirements for all sanitary disposal projects." Some of these requirements are not applicable to all SDPs (e.g. groundwater monitoring plans, leachate control systems), which may lead to some confusion by prospective applicants. The DNR's issuance of SDP permits for solid waste activities that do not meet the statutory definition of an SDP (i.e. facilitates the final disposition of solid waste) has made this issue more prominent.

### 11. ARE THE CITATIONS IN THE CHAPTER ACCURATE?

11a. If this chapter contains Iowa Code citations, are those citations proper and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11b. If not, then proceed to question 11c.*

11b. If not, list and explain the corrections that need to be made to the Iowa Code citations.

567 IAC 102.4 references Iowa Code chapter 114, however, this statutory chapter is reserved. Reserved chapters serve as a placeholder for future statutory requirements. It's assumed that this reference was intended for 567 IAC 114, which pertains to construction and demolition waste landfills.

567 IAC 102.14(1) references the emergency response and remedial action plan requirements in Iowa Code section 455B.306(6)"d," however, the correct citation is Iowa Code section 455B.306(7)"d". This incorrect reference is also reiterated in 567 IAC 102.14(3)"e" and 567 IAC 102.14(4)"b"(1).

11c. If this chapter contains federal statutory citations, are those citations proper and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11d. If not, then proceed to question 11e.*

11d. If not, list and explain the corrections that need to be made to the federal statutory citations.

Not Applicable

11e. If this chapter contains federal regulatory citations, are those citations proper and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11f. If not, then proceed to question 11g.*

11f. If not, list and explain the corrections that need to be made to the federal regulatory citations.

Not Applicable

11g. If this chapter contains internal cross-reference citations, are those citations correct and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11h. If not, then proceed to question 11i.*

11h. If not, list and explain the corrections that need to be made to the internal cross-references.

Not Applicable

11i. If the chapter contains cross-reference citations to other chapters, are those citations correct and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11j. If not, then proceed to question 11k.*

11j. If not, list and explain the corrections that need to be made to the cross-references to other chapters or outside sources.

567 IAC 102.2(2)"b" references 567 IAC 7, which is an adoption by reference of Iowa Code sections 17A.3, 17A.12 and 17A.18. Perhaps it would be clearer to just reference the specific Iowa Code sections within 567 IAC 102.2(2)"b."

11k. If this chapter contains website references, are those website references necessary, correct and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11l. If not, then proceed to question 11m.*

11l. List and explain any necessary corrections to the website references.

Not Applicable

11m. If the chapter contains addresses and phone numbers, are the addresses and phone

numbers necessary, correct and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11n. If not, then proceed to question 11o.*

11n. List and explain any corrections that need to be made to the addresses and phone numbers contained in the chapter.

Not Applicable

11o. If the chapter contains adoptions by reference, are those adoptions by reference correct and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11p. If not, then proceed to question 11q.*

11p. List and explain any corrections that need to be made to update adoptions by reference.

Not Applicable

11q. If the chapter contains DNR-created documents adopted by references, are those document references necessary, correct and current?

Yes  No  Not Applicable  **(check or circle one option)**

*If the answer is "no," then answer question 11r. If not, then proceed to question 12.*

11r. List and explain any corrections that need to be made to update the DNR-created document references.

Not Applicable

## 12. WHAT PUBLIC GROUPS ARE AFFECTED BY THE CHAPTER?

12a. List any stakeholder groups, workgroups, public groups or other public participants impacted by the issues in the chapter.

Potential interested parties: Public and private agencies operating or planning to operate a sanitary disposal project (SDP) in Iowa, Iowa Society of Solid Waste Operations (ISOSWO), Association of Business and Industry (ABI), Farm Bureau, Iowa Solid Waste Comprehensive Planning Areas, Iowa Environmental Council (IEC), Iowa Recycling Association (IRA), Sierra Club – Iowa Chapter, Iowa State Association of Counties (ISAC), Iowa League of Cities, County Environmental Health Sanitarians.

12b. If any stakeholders have already been included in a review process for this chapter during the past five years, state the names of those stakeholder groups, workgroups, public groups, or other public participants, and explain the nature of their involvement.

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External stakeholder feedback has not been sought in the past five years regarding revisions to this administrative chapter.

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