



Department of Natural Resources

Five-Year Rule Review Worksheet

Basic Information, and Parts A and B

(Instructions: Part C of this Worksheet, pertaining to Phase 2, is contained in a separate document. If Part C is applicable to the relevant rules chapter, please also fill out Part C for that chapter.)

BASIC INFORMATION

Date Parts A and B Review Concluded: September 1, 2014

Reviewer Name(s): Chad A. Stobbe

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Chapter Number: 108

Chapter Name: Beneficial Use Determinations: Solid By-Products As Resources And Alternative Cover Material

Purpose of chapter: The purpose of this administrative chapter is to encourage the beneficial use of solid by-products in order to preserve resources, conserve energy, and reduce or eliminate the need to dispose of solid by-products in sanitary landfills. Furthermore, the purpose of this administrative chapter is to encourage to the maximum extent possible, consistent with accepted engineering practices, the utilization of solid by-products as resources when such utilization improves, or at a minimum does not adversely affect, human health and the environment.

**(Instructions: If this chapter is lengthy or it covers diverse subject matter, then you may wish to break the chapter into portions and fill out one "Five-Year Rule Review Worksheet" for each portion of the chapter. If you chose this option, please specify the portion of the chapter reviewed in each Worksheet (for example "561 Iowa Administrative Code chapter 3, rules 3.1 through 3.6".)*)*

Legal authority:

[Iowa Code section 455B.304](#) - 455B.304(1) and 455B.304(19)

[Iowa Code section 455D.4](#) - 455D.4(1) and 455D.4(2)

*(Instructions: At the end of each chapter, there should be a sentence stating: “These rules are intended to implement Iowa Code chapter(s)” These citations provide the general legal authority for the rules chapter. To find this sentence, please go to the URL provided for the appropriate Iowa Administrative Code agency number (ex: 565 or 567), scroll down to the appropriate chapter, and click on the “PDF” box for that chapter. At the end of each chapter, you will find the above-mentioned sentence as well as the **effective date** of the chapter. **Note:** Be sure to click on the **PDF** link below for the **entire chapter**. If you click on the other available links, such as for the Word versions or the “Rules” links, the statutory authority may not be included. The PDF version is identical to the hard copy version which contains the statutory authority.)*

Title	URL
561	https://www.legis.iowa.gov/IowaLaw/AdminCode/chapterDocs.aspx?pubDate=01-23-2013&agency=561
565	https://www.legis.iowa.gov/IowaLaw/AdminCode/chapterDocs.aspx?pubDate=01-23-2013&agency=565
567	https://www.legis.iowa.gov/IowaLaw/AdminCode/chapterDocs.aspx?pubDate=01-23-2013&agency=567
571	https://www.legis.iowa.gov/IowaLaw/AdminCode/chapterDocs.aspx?pubDate=01-23-2013&agency=571
575	https://www.legis.iowa.gov/IowaLaw/AdminCode/chapterDocs.aspx?pubDate=01-23-2013&agency=575

Further information regarding the legal authority for the chapter may be stated somewhere in the chapter or in a preamble relating to rulemaking pertaining to the chapter. If you cannot find the legal authority for the chapter or the portion of the chapter that is the subject of your Worksheet, and you need assistance, please consult with the assigned attorney.)

Part A
EVALUATION TO DETERMINE WHETHER CURRENT RULE CHANGES ARE NEEDED

(Instructions: Please answer the following questions to determine whether current rule changes are needed to the chapter or portion of a chapter that is the subject of this Worksheet. If you can answer "yes" to any of the following questions, then this chapter does not need further review at this time.)

1. Was this chapter or portion of a chapter adopted within the past five years?

Yes No **(check or circle)**

1a. If yes, then what is the effective date of this chapter or portion of a chapter?

*(Instructions: If the answer to question 1 is "yes," then answer any sub questions and **STOP**. This chapter or portion of a chapter does not need further review under the five-year rule review plan. If the answer to question 1 is "no," then proceed to the next question.*

*For instructions regarding how to find the **effective date** of a chapter, please refer to the instructions above in the "Basic Information" portion of the worksheet.)*

2. Was this chapter or portion of a chapter revised extensively within the past five years?

Yes No **(check or circle)**

2a. If yes, then did the revisions occur with stakeholder assistance that occurred outside of the Iowa Code chapter 17A public participation process?

*(Instructions: If the answer to question 2 is "yes," then answer any sub questions and **STOP**. This chapter or portion of a chapter does not need further review under the five-year rule review plan. If the answer to question 2 is "no," then proceed to the next questions.)*

3. Does legal authority for this chapter or portion of a chapter continue to exist?

Yes No **(check or circle)**

4. If this chapter or portion of a chapter was adopted more than five years ago, does it continue to serve the purpose for which it was intended?

Yes No **(check or circle)**

5. Does this chapter or portion of a chapter comply with applicable current federal requirements? (This would include sections that adopt by reference current federal

requirements.)

Yes No **(check or circle)**

*(Instructions: If the answer to questions 3, 4, and 5 is "yes," then **STOP**. This chapter or portion of a chapter does not need further review under the five-year rule review plan. If the answer to question 3, 4, or 5 is "no," then proceed to Part B.)*

Part B

EVALUATION TO DETERMINE ELIGIBILITY FOR PHASE 1

*(Instructions: Please answer the following questions to determine the eligibility of this chapter or portion of the chapter for Phase 1 rulemaking. If you can answer "yes" to **any one** of the following questions, then this chapter or portion of a chapter is eligible for Phase 1 rulemaking. If the response to a question is unclear or needs further review, and you did not answer "yes" to any of the other questions, then the chapter or portion of a chapter may be a candidate for Phase 2 rulemaking.)*

1. Is this chapter or portion of a chapter **outdated** because the Iowa statutory authority for this chapter or portion of a chapter no longer exists?

Yes No **(check or circle)**

2. Is this chapter or portion of a chapter **outdated** because the federal statutory authority or federal regulatory/rule authority for this chapter or portion of a chapter no longer exists?

Yes No **(check or circle)**

3. Is this chapter or portion of a chapter **outdated** because the chapter or portion of a chapter is no longer implemented?

Yes No **(check or circle)**

4. Is this chapter or portion of a chapter **outdated** because the program this chapter or portion of a chapter was intended to implement no longer exists?

Yes No **(check or circle)**

5. Is this chapter or portion of a chapter currently clearly **inconsistent** with (a) federal statutes or rules, (b) another chapter of Iowa rules or an Iowa statute, or (c) other provisions of this chapter?

Yes No **(check or circle)**

5a. If this chapter or portion of a chapter is inconsistent with another provision of law, please summarize the inconsistency and give the citation of the inconsistent law.

This administrative chapter's fill material provisions in 567 IAC 108.6(1) were never intended to encompass large-scale reclamation projects, however over time, various mine reclamation activities have been authorized by the DNR. Whether placement in an open pit quarry or in a engineered landfill disposal cell, these management activities are virtually identical, except for the level of environmental controls and site design requirements placed upon sanitary landfills prior to by-product placement. By not specifying more clearly the limitations upon solid by-products used as fill material, the DNR created an unintended regulatory conflict that circumvents applicable landfill regulations (i.e. 567 IAC Chapters 103 and 115).

6. Is there a clear **lack of legal authority** for this chapter or portion of a chapter?

Yes No **(check or circle)**

7. Does another Iowa agency implement the same or similar rules in a way that causes this chapter or portion of a chapter to be **redundant**?

Yes No **(check or circle)**

7a. Please give the citation of the same or similar rules.

The Iowa Department of Agriculture and Land Stewardship (IDALS) regulates the reclamation of mines and quarries pursuant to Iowa Code Chapter 208 and 27 IAC 60. While the ultimate authority regarding what constitutes final reclamation is that of IDALS, approval of certain materials for beneficial fill at these sites has been a part of 567 IAC 108.

IDALS also regulates the application of materials as liming agents, soil conditioners and fertilizers pursuant to 21 IAC 43 and Iowa Code chapter 201A. As there are several solid by-products listed in 567 IAC 108.4 (e.g. lime, gypsum and gypsum wallboard, wood ash, cement and lime kiln dusts) as universally approved as a soil amendment pursuant to 567 IAC 121, this raises concerns about dual regulation and conflicting requirements. Many of the solid by-products regulated under 567 IAC 108 provide some level of

agronomic or physical benefit to soil, which may make them eligible for regulation under IDALS's fertilizer and soil conditioner program. If these solid by-products are being marketed and sold as a fertilizer or soil conditioner, they perhaps should be regulated by IDALS rather than using 567 IAC 108.