

IOWA STATUTORY AUTHORITY FOR THE REGULATION OF SOLID WASTE

The Solid Waste Section of the Iowa DNR Land Quality Bureau is undertaking a review of Iowa's solid waste regulations. The first step of the review was to re-evaluate existing requirements in the context of the underlying authorities and the changes to the solid waste disposal and recycling industries since the enactment of those authorities. Once this analysis has been completed, the DNR intends to revise and update the regulations to better conform to the statutory authority and current circumstances. The following is a general review of the underlying authorities.

The primary state authority for the regulation of solid waste arises from Iowa Code Chapter 455B, Division IV "Solid Waste Disposal", Part 1 "Solid Waste" (Iowa Codes section 455B.301-455B.316). This Part establishes the following basic components of Iowa solid waste regulation:

1. The policy of the state for solid waste management;
2. The requirements for siting, permitting, and operation of sanitary disposal projects;
3. Comprehensive planning for solid waste management by operators of municipal solid waste sanitary disposal projects;
4. Prohibitions against the illegal disposal of solid waste; and
5. Tonnage fees to be collected by the state on solid waste disposal.

The DNR has the authority to require a permit for the operation of a sanitary disposal project, which is defined at 455B.301(21) as:

21. "*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 solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

Because the phrase "final disposition of solid waste" remains undefined, the DNR must look to the use of the term in the context of the statute, the origin of the statute, and case law to determine the meaning of this phrase and therefore the scope of the DNR's permitting authority.

A. Statutory Context.

The State of Iowa has established a waste management hierarchy at Iowa Code section 455B.301A. The hierarchy is as follows:

- a. Volume reduction at the source.
- b. Recycling and Reuse.
- c. Combustion with energy recovery.
- d. Other approved techniques of solid waste management including but not limited to combustion for waste disposal and disposal in sanitary landfills.

The question raised is which, if any, of these options constitute “final disposition” for purposes of the definition of “final disposition of solid waste”. Obviously, volume reduction at the source cannot constitute final disposition of anything because the practice prevents the creation of anything. Similarly, reuse for an item’s original purpose does not create a solid waste for which final disposition need be determined. Recycling and combustion with energy recovery both take an otherwise discarded material and create something new with it. The DNR believes that in these cases the material is never discarded and therefore final disposition does not occur. Because this may be a subject of disagreement, further analysis is appropriate.

Iowa Code section 455B.302 establishes the solid waste management duties of cities and counties of the state. Every city and county shall provide for the establishment and operation of a comprehensive solid waste reduction program and must also provide for the establishment and operation of “a sanitary disposal project for final disposal of solid waste by its residents”. This phrase uses “disposal” interchangeably with “disposition”, which is used in the definition of sanitary disposal project, as does the very name used (sanitary disposal project). The section goes on to state that “a city or county may at any time during regular working hours enter upon the premises of a sanitary disposal project, including a sanitary landfill, in order to inspect the premises....” This phrase clearly contemplates that a sanitary disposal project may be something other than a sanitary landfill. At this point we can conclude that a sanitary disposal project provides for final disposal but may be something other than a landfill.

Iowa Code section 455B.304 sets forth the rulemaking authorities of the DNR with respect to solid waste. Specific issues addressed include the land application of sludge, groundwater protection at landfills, landfill gas control, leachate management, grant programs, certified operators for sanitary landfills, land application of petroleum-contaminated soils, disposal of special wastes in a landfill, and the determination by the DNR of when the use of a solid-by-product, including energy recovery, constitutes use rather than disposal. The focus of these provisions appears to be the land disposal of solid wastes. This focus informs the determination of what constitutes final disposition for the purpose of the permitting of sanitary disposal projects.

Iowa Code section 455B.305 addresses the permitting of sanitary disposal projects. The only specific, rather than procedural, issues addressed in this section are comprehensive plan implementation prior to the permitting of municipal sanitary landfills and transfer stations; and leachate control at sanitary landfills. These references reaffirm that it is the intent of the statutory provisions to require sanitary disposal project permitting for landfills and transfer stations.

Iowa Code section 455B.305A requires local siting approval for sanitary landfills, incinerators, and medical waste incinerators. Pursuant to the definition of “incinerator” found at Iowa Code section 455B.301, this is not a reference to boilers or industrial furnaces. The focus is on the lowest level of the waste management hierarchy, sanitary landfills and combustion without energy recovery.

Iowa Code section 455B.306 relates to comprehensive solid waste management plans which must be filed by cities, counties, or private agencies operating a municipal sanitary disposal project. In order to have a permit for a sanitary disposal project, including a transfer station, a city or county must document that they have implemented solid waste management techniques other than disposal. The specific requirements of the plan include documenting recycling, leachate control, closure and postclosure planning and financial assurance, and emergency response. This code section reinforces the distinction between recycling or waste reduction practices and those activities conducted at a sanitary disposal project.

Iowa Code section 455B.307 prohibits dumping or depositing solid waste at a location other than a permitted sanitary disposal project. This section implies that “dumping or depositing” is what occurs at a sanitary disposal project.

A complete reading of Division IV, Part 1 of Chapter 455B supports the premise that the intent of the regulations is to regulate and permit the final disposal of solid waste through landfilling or combustion without energy recovery. The specific requirements of Part 1 are clearly focused on such activities and the Iowa solid waste hierarchy distinguishes these activities from recycling, reuse, and combustion with energy recovery. The use of the word “disposal” in the phrase “sanitary disposal project” should not be overlooked. Statutes are presumed to have their plain meaning unless a contrary interpretation is clearly established by the statute. Based upon this presumption and the context of Part 1 of Division IV of Chapter 455B, it should be presumed that “sanitary disposal projects” must facilitate final disposal.

B. Case Law.

The Iowa Supreme has reviewed the definition of “sanitary disposal project” in the case of *ABC Disposal v. Iowa Dept. of Natural Resources*, 681 N.W.2d 596, 605-606 (Iowa 2004). The court held that the definition was not unduly vague and stated:

The statute is not vague as written. The statute defines “[a]ll facilities and appurtenances ... which are acquired, purchased, constructed, reconstructed, equipped, improved, extended,

maintained, or operated to facilitate the final disposition of solid waste ..." as sanitary disposal projects. The facility must not only "facilitate the final disposition of solid waste," but must also be "acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated" for that purpose. A dumpster located at an office building is not located at a facility "acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste." The legislature has not given the DNR the authority to define sanitary disposal projects on an ad hoc or subjective basis. If the facility is acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated for the purpose to facilitate the final disposition of solid waste, it is a sanitary disposal project. This definition is not so uncertain that it fails to give fair notice to the public as to which facilities are sanitary disposal projects.

This ruling is based upon the idea that one must look to the purpose of the facility as a whole. If the primary purpose of the facility is to manufacture a product, then it would not be a sanitary disposal project. When applying this reasoning to the determination of whether a recycling facility or energy recovery facility is required to obtain a sanitary disposal project permit it is clear that, so long as the primary purpose of the facility is not "final disposition" (disposal), or the facilitation of final disposal, the facility does not constitute a sanitary disposal project.

C. Federal Regulations

Solid waste disposal is regulated at the federal level through the Resource Conservation and Recovery Act (RCRA). Nonhazardous waste disposal is regulated through RCRA Subtitle D. These regulations focus on municipal sanitary landfill regulations designed to protect groundwater. The federal programs are limited in scope and do not require the state permitting of recycling or resource recovery facilities. Iowa has received federal approval and delegation to implement RCRA Subtitle D. The required regulations are found at 567 IAC Chapter 113 and relate solely to the regulation of municipal solid waste landfills. The federal delegation does not require Iowa to regulate beyond the requirements for municipal solid waste landfills.

D. Historical Context.

The current definition of "sanitary disposal project" was first adopted by the Iowa Legislature in 1970 at Iowa Code section 406.2(3). The purpose of Chapter 406, as stated in Iowa Code section 406.1, (1971), was as follows:

406.1 Purpose. The purpose of this chapter is to require cities, towns, and counties to provide sanitary disposal projects for the final disposition of solid wastes by their residents and, thereby, protect the citizens of this state from such hazards to their health, safety and welfare that result from the uncontrolled disposal of solid wastes.

Chapter 406 went on to require every city, town and county to provide for the establishment and operation of a sanitary disposal project for final disposal of solid waste by its residents not later than the first of July, 1975. The “sanitary disposal project” definition in Chapter 406 is identical to the current definition except in reference to the name of the state agency with oversight. The original “commissioner of public health” has been changed to “executive director” due to the creation of the DNR in the 1980’s.

It is a rule of statutory and case law in Iowa that a statute which is reenacted, revised or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute. See Iowa Code section 4.10. Because the current definition of “sanitary disposal project” found at Iowa Code section 455B.301(21) has not been substantively changed since its 1970 adoption as Iowa Code section 406.2(3)(1971), the current meaning must legally be the same as the original meaning when adopted. There have been subsequent, additional, requirements added to the law and rules for these facilities but the types of facilities that are the subject of the definition must be considered to be the same types of facilities.

Based on Iowa Code section 406.3(1971) these “sanitary disposal projects” are for final disposal of solid waste. We also know from historical record that the expectation of the legislature and the public at the time of the 1970 enactment of Iowa Code Chapter 406 is that the requirements of that chapter applied to landfills. Cities and counties were not required at the time to establish recycling centers. They were required to build landfills.

Cities and counties have, since 1970, been required to develop and implement comprehensive solid waste management plans to provide for recycling and waste reduction. These additional requirements do not change the nature of what is a sanitary disposal project and which facilities must obtain sanitary disposal project permits.

E. Other Iowa Statutory Requirements.

In addition to the requirements of Iowa Code Chapter 455B, Division IV “Solid Waste Disposal”, Part 1 “Solid Waste”, the State of Iowa has adopted other statutory requirements for the management of solid waste. These requirements are primarily set forth in Iowa Code chapters 455C and 455D.

Iowa Code Chapter 455C establishes and regulates Iowa’s beverage container redemption law. Recyclers, handlers and processors of empty beverage containers have never been viewed as sanitary disposal projects in Iowa and have not been required to obtain permits.

Iowa Code Chapter 455D establishes a variety of programs and policies for the recycling and reduction of solid waste. The purpose of Chapter 455D, as set forth in Iowa Code sections 455D.2, 455D.3, and 455D.4, is to encourage and promote the recycling of waste materials in Iowa. Two specific findings of the legislature which are pertinent to this discussion are:

455D.4(2) It is the policy of this state to support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development, in Iowa, of businesses relating to waste reduction and recycling.

455D.4(5)(c) The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than it is to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly government actions.

A determination of what constitutes a “sanitary disposal project” subject to permitting must be made with these findings in mind. The DNR should work to encourage recycling and avoid creating additional burdens on the recycling industry.

Iowa Code Chapter 455D does contain various landfills bans, regulatory requirements, and permitting requirements. The DNR shall require a permit for the processing or storage of waste tires. Nothing in Iowa Code Chapter 455D indicates that the waste tire permits would constitute “sanitary disposal project” permits. In fact, if these facilities are considered sanitary disposal projects then these statutory provisions would be superfluous because the requirement that a sanitary disposal project obtain a permit predates the enactment of these specific provisions.

Ultimately, nothing in Iowa Code Chapter 455D conflicts with the DNR determination that sanitary disposal project permits are only authorized and required for facilities which facilitate the final disposal of solid waste such as transfer stations and sanitary landfills.

Conclusion

Based on the foregoing analysis, the DNR has determined that the intent of Iowa Code Chapter 455B, Division IV “Solid Waste Disposal”, Part 1 “Solid Waste” (Iowa Codes section 455B.301-455B.316) is to regulate and permit the final disposal of solid waste through landfilling or combustion without energy recovery, which would include transfer stations that deliver solid waste to such facilities. A sanitary disposal project permit should only be required for these types of facilities and should not be required for facilities engaged only in recycling, reuse or other diversion.