

BCTT Subcommittee

A.3. Legal Issues and B.1. Land Use Review

Committee Members:

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Where can the trash come from?

The US Constitution explicitly gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes."

This is referred to as the "Dormant Commerce Clause".

United States Supreme Court ruled unconstitutional a Michigan law barring out-of-State solid waste from being deposited in landfills located in Michigan Counties.

Interpreting Code Provisions

Provisions that are derived not from State Statute can be:

- Plausible
- Interpreted
- Developed
- Adopted

If a term is not defined in code or is otherwise a term of art:

- Intent
- Ordinary
- Plain
- Context
- Dictionary

Deference Can't Be Used to Amend Code

Franchise Agreements

Past Franchise Agreements are no longer relevant.

Conditional Use Permits (CUP)

- Prior Decisions are final.
- Future applications to be judged under current Criteria.
- Can not impose conditions unrelated to the criteria.
- Existing and Past are not within scope.

Suggested Best Practice for CUP

To Clearly State in Land use decision which if any of the prior approval conditions carry over with the new approval.

This subcommittee thinks there should be a memo on this topic with best practices.

Who is responsible for the Landfill upon closure?

- DEQ regulations require up-front and ongoing financial assurance to cover the cost of closure/post-closure obligations, as well as costs of corrective action.
- Owner is required to provide a financial assurance plan, and the plan must be updated annually.
- Valley Landfills, Inc.'s current financial assurance plan is available as public record and attached to the memo prepared for the Workgroup.
- If the owner/operator fails to provide the required financial assurance, or fails to satisfy its closure/post-closure obligations, then OR law permits liability for these obligations to extend to persons/entities with legal authority to control the site.

Who is responsible for Monitoring Conditions?

- Republic Services
- Benton County
- DEQ
- Citizens
- Customers

**Noise is no longer monitored by DEQ. Defunded in 1991*

Additional Key Notes

- Compilation of rights and obligations of Republic Services
- Compilation of jurisdictional authorities and their areas of responsibility regarding landfills, hauling and materials management
- Summary of the land use review process
- Discussion of specific subjective (potentially ambiguous) provisions in the Development Code, including how those terms have been applied in previous County decisions.
- An explanation of the 150-day time limit of land use application review, including considerations for future practice.
- Distribution of information related to a land use application – legal requirements and past practices.