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ADDRESS REPLY TO:
CONSUMER PROTECTION DIVISION
HOOVER BLDG., SECOND FLOOR
1300 EAST WALNUT
DES MOINES, IOWA 50319
515/281-5926

March 26, 1984

RE: Your Inquiry Concerning What Finance Charge
May be Assessed by a Sanitary Landfill

Dear

In order to determine what finance charge the landfill may assess, it should first be determined whether the landfill falls under the Iowa Consumer Credit Code (hereinafter referred to as the ICCC). You should then next consider whether it is covered by the § 537.1202(3) exclusion:

3. Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

Public utility is not defined by the ICCC. However, other code sections dealing with government authority to regulate various public services (See: for example, § 384.84, City Finance - Rates for Proprietary Functions and § 455B.302, Solid Waste Disposal: Duties of Cities and Counties) seem to include a landfill as a "public utility."

If, indeed, the landfill is a "public utility" and its charges for delayed payment are regulated by some level of government, they are then (assuming they are otherwise consumer credit transactions) excluded from the ICCC. The rate of finance charge would then be determined by the regulating government body.

If the landfill does not fall under the § 537.1202(3) exclusion, but if it has been determined that some or all of

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their transactions are consumer credit transactions, then the accounts would be covered by ICCA § 537.2202 which sets finance charge limits on open accounts. Whether or not some or all of the accounts are consumer credit transactions depends on how the transaction is structured initially and in particular whether or not there is an extension of credit.

Assuming some or all of the landfill transactions are not consumer credit transactions (because they are made for agricultural or business purposes), they would then presumably fall under § 535.11 (Finance Charge on Accounts Receivable) so long as they are "debts arising from the retail sale of goods or services on credit." (See: definition of accounts receivable in § 535.11[5].)

In any event, the answer to your inquiry would appear to be that unless the landfill can show that as to consumer credit transactions it is excluded by § 537.1202(3), the finance charge to be assessed by the landfill is governed by the rate contained in § 537.2202 (1 1/2% on balances up to \$500 and 1 1/4% on the amount over \$500) either because the transaction is an open-end consumer credit transaction or an account receivable as defined in § 535.11.

Since the landfill has been charging 2% on all accounts if they expect to continue to charge this rate, they will now have to show:

- 1) That as to any accounts which are consumer credit transactions, these accounts fall under the public utility exclusion of § 537.1202(3), and
- 2) That for business and agricultural accounts, the landfill must have a written agreement pursuant to § 535.2(a)(5) in order to charge 2% monthly.

When you respond to the party who made the inquiry on behalf of the landfill, please advise them that this letter is to be treated only as informal advice and not as an opinion of the attorney general or a ruling of the ICCA Administrator.

Sincerely,



LINDA THOMAS LOWE
Assistant Attorney General

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Enclosures: § 537.1202(3)
§ 537.2202
§ 535.2(a)(5)
§ 535.11
3-13-84 letter from