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# Colorado Hazardous Waste Regulations

## Part 6

### Hazardous Waste Commission Fees

(Amended 5/17/11, effective 6/30/11)

To obtain more information regarding the Colorado Hazardous Waste Regulations, please contact the Hazardous Materials and Waste Management Division at 303-692-3300.

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**PART 6 SOLID AND HAZARDOUS WASTE COMMISSION FEES**

**§ 6.01 Authority.**

Authority for the Solid and Hazardous Waste Commission to promulgate these rules is found at section 25-15-314(a) and (b), C.R.S. These rules are intended to be consistent with the requirements of section 25-15-301, et seq., C.R.S.

**§ 6.02 Scope and Purpose.**

(a) These rules shall govern the assessment of fees by the Solid and Hazardous Waste Commission on generators and transporters of hazardous waste and facilities that treat, store or dispose of hazardous waste. These fees are assessed against those entities that have a Colorado Environmental Protection Agency identification number. The fee schedule is based upon and is intended to cover the reasonable costs actually associated with the operations of the Commission.

(b) These rules shall also set the amount of a filing fee that will accompany petitions for interpretive rulings pursuant to sections 25-15-305 and 25-15-308, C.R.S. The filing fee is to defray the reasonable costs actually associated with processing the petitions.

**§ 6.03 Definitions.**

**For purposes of this part, the following definitions shall apply:**

(a) "**Commercial treatment, storage or disposal facility**" means a location which accepts hazardous waste not generated on-site, treats, stores or disposes of the hazardous waste and the location is subject to the requirements of 6 CCR 1007-3, Parts 264 or 265.

(b) "**Commission**" means the Solid and Hazardous Waste Commission created pursuant to section 25-15-302, C.R.S.

(c) "**Commission fee**" means the fee imposed upon generators and transporters of hazardous wastes and upon facilities that treat, store, or dispose of hazardous wastes to offset the reasonable costs actually associated with the operations of the Commission.

(d) "**Filing fee**" means the fee imposed upon a party requesting an interpretive rule to defray the reasonable administrative costs actually associated with processing petitions for interpretive rulings pursuant to 25-15-308(3) (g), C.R.S., or section 25-15-305(2) (e).

(e) "**Fiscal year**" means the period running from July 1 to June 30.

## § 6.04

(f) "**Generator**" means any person, by site, whose act or process produces hazardous waste identified or listed in 6 CCR 1007-3, Part 261 or whose act first causes a hazardous waste to become subject to regulation and is subject to the requirements of 6 CCR 1007-3, Part 262.

(g) "**Large Quantity Generator**" means a generator that generates more than 1000 kg of hazardous waste in a calendar month.

(h) "**Non-commercial treatment, storage or disposal facility**" means a location at which hazardous waste is generated on-site and is subjected to treatment, storage or disposal on-site and is subject to the requirements of 6 CCR 1007-3, Parts 264 or 265.

(i) "**On-site**" has the same meaning as that contained in 6 CCR 1007-3, Part 260.

(j) "**Small Quantity Generator**" means a generator who generates more than 100 kg but less than 1000 kg of hazardous waste in a calendar month.

(k) "**Transporter**" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway or water and subject to the requirements of 6 CCR 1007-3, Part 263.

### § 6.04 Annual Commission Fee.

(a) For fiscal year 2011-2012 the following fees shall be assessed:

- (1) Small quantity generators \$65;
- (2) Large quantity generators \$210;
- (3) Transporters \$70;
- (4) Non-commercial treatment, storage or disposal facilities \$400; and
- (5) Commercial treatment, storage or disposal facilities \$600

(b) Any entity that falls into two or more of the above categories, shall pay the fee for each such category. Any entity or person required to pay an annual fee under § 6.04 shall pay that fee by September 15 of each year. If the fee is not paid timely, the matter shall be referred to the enforcement section for action. Delinquent accounts will also be turned over to State Collections for action. Payment shall be made to the Colorado Department of Public Health and Environment and said monies shall be credited to the Solid and Hazardous Waste Commission Fund.

(c) If a transporter has a current hazardous materials transportation permit issued by the Colorado Public Utilities Commission and provides a copy of that permit to the Commission's Administrator, the transporter's fee for that year shall be waived.

**§ 6.05 Filing Fee.**

(a) Any person petitioning the Commission to issue an interpretive rule pursuant to sections 25-15-305 and 25-15-308, C.R.S. shall pay to the Commission a fee of \$100 at the time the petition is filed with the Commission.

(b) Payment shall be made to the Colorado Department of Public Health and Environment and said monies shall be credited to the Solid and Hazardous Waste Commission Fund.

**§ 6.06 Purpose.**

The fundamental purpose of these rules is to establish the fees which will be imposed by the Solid and Hazardous Waste Commission ("Commission") to individual generators, transporters, and treatment, storage or disposal facilities ("TSDFs") to fund the reasonable costs of the operation of the Commission. These rules also set the amount of the filing fee to be paid by a party requesting an interpretive rule. These rules are promulgated pursuant to section 25-15-314(1), C.R.S. The rules are needed because the Commission is a cash funded program and without the implementation of fees to pay for the reasonable expenses and operating costs of the Commission, the Commission cannot perform its statutorily mandated duties of promulgating hazardous waste rules, issuing interpretive rules and reviewing administrative penalties.

**§ 6.07 Basis.**

The basis for these regulations was the passage of Senate Bill 116, during the 1991-1992 legislative session. That Act created the Hazardous Waste Commission and required that the Commission generate enough revenue through the imposition of fees to pay for the reasonable actual costs of the Commission's activities. The Commission was authorized to promulgate rules that established fees to offset the reasonable costs actually associated with the operations of the Commission and a filing fee to help defray reasonable administrative cost actually associated with processing petitions for interpretive rulings.

The Commission fees established for fiscal year 1992-93 were universally set at \$55 for each category. The Commission determined as a matter of policy to set the fees for fiscal year 1993-94 based upon a graduated schedule. While no testimony was offered in support a graduated scheme, the Commission decided as a policy matter to assess higher fees for those categories that treat, store or dispose of hazardous waste or for categories that generate larger quantities of hazardous waste.

## § 6.07

The fees for 1994-95 were based on the anticipated cost of approximately \$158,445. The total amount of the assessed fees exceeded the anticipated spending authority. In fiscal year 1993-94 approximately 37% of the initial accounts receivable billed were uncollected because the entity was no longer in business, did not generate any waste or at the level originally reported, or failed to pay the fee. Thirty percent of the amount billed for fiscal year 1994-95 is anticipated to go uncollected for similar reasons. The Commission determined that a fee increase was not needed because of a slight reduction in the Commission's spending authority and budget needs and the conservative financial management of the Commission. For the reasons stated above, the fees for fiscal year 1995-96 will remain the same.

During the hearings for the Commission fees for 1993-94 the Commission heard and considered testimony from a transportation association which stated that a flat fee could not be imposed upon transporters because it is not otherwise authorized by federal law and is consequently subject to scrutiny under the preemptive authority of the federal Hazardous Materials Transportation Act of 1990 ("HMTA"). HMTA allows a state to impose a fee on transporters if it is equitable and used for purposes related to the transportation of hazardous materials. Hazardous waste is a subset of hazardous materials. The association testified that the fee for interstate transporters should be based upon the miles traveled in Colorado or by weight for packaged freight. The association representative also testified that a flat fee was acceptable for solely intrastate transporters. After consultation with legal counsel, the Commission determined that its fee assessed against transporters is equitable and is related to the transportation of hazardous materials consistent with HMTA. While the Commission agreed that a more finely calibrated user charge may arguably be more equitable, the evidence presented to it indicated that the administrative difficulties associated with its implementation made this scheme impracticable. No information submitted pursuant to the state hazardous materials and waste management program provides the necessary data required to assess fees based upon mileage or weight. Similarly, evidence in the record indicated that no other state agencies with jurisdiction over transporters collect the necessary information for such a scheme. Thus, imposition of any fee other than a flat fee would be an undue administrative burden because it would require the establishment of a program for the generation and collection of such data, creating additional costs. The Commission believes this to be unreasonable and would likely result in fees greatly in excess of those assessed in the current regulation.

The fee is assessed only to those entities which have a Colorado Environmental Protection Agency identification number because these entities have obtained their identification numbers through the state and appear on the state Resource Conservation Recovery Information System Notifiers List.

The Commission will repromulgate rules for each fiscal year and set the fees according to the costs for the operation of the upcoming fiscal year.