

# DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

## Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

### 6 CCR 1007-2

(Adopted by the Solid and Hazardous Waste Commission on November 15, 2011)

#### STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

#### Amendments to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Amendment of Section 13.2.5(C) {Incorporation by Reference}

##### Basis and Purpose

This amendment to 6 CCR 1007-2, Section 13.2.5(C) is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Sections 25-15-302(4.5) and 30-20-109, C.R.S.

This amendment revises paragraph (C) of section 13.2.5 of the Medical Waste regulations adopted by the Solid and Hazardous Waste Commission on August 16, 2011 to specify that the specific materials or regulations incorporated by reference in these regulations are listed in the Statement of Basis and Purpose for this rulemaking, and are available for examination on the internet and at the Department.

As a result of the enactment of House Bill 10-1235, the requirements regarding the incorporation of outside materials by reference in state agency rules changed. Under section 24-4-103(12.5), C.R.S., an agency promulgating rules is allowed to refer to outside materials by incorporating the materials by reference without having to print the entire text of the incorporated material as part of the rule. Agencies must consider whether the material is eligible for incorporation by reference. Incorporation by reference may occur if the outside material is readily available in written form or electronic form, i.e., the internet. The incorporation by reference statute (§ 24-4-103(12.5)) recognizes material from three sources:

- An agency of the United States;
- A state agency, from either this state or another state;
- A nationally recognized organization or association.

The reference in the agency's rules must include the following:

- Identification of the incorporated code, standard, guideline, or rule by citation and date;
- A statement that the rule does not include later amendments to or editions of the incorporated code, standard, guideline, or rule;

- The address of the agency office where the incorporated code, standard, guideline, or rule is available for public inspection;
- Where copies of the incorporated code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, or another state or the organization or association originally issuing the code, standard, guideline, or rule.

While the Office of Legislative Legal Services (OLLS) found no substantive issues in its review of the Section 13 Medical Waste Regulations, OLLS did indicate that Section 13.2.5 included material no longer required by Section 24-4-103(12.5), C.R.S., and failed to include a statement of where copies of the incorporated code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule, and where copies are available from the agency, state, organization or association originally issuing the code, standard guideline or rule.

This amendment to 6 CCR 1007-1, Section 13.2.5(C) addresses the concerns expressed by OLLS and provides compliance with the new incorporation by reference requirements now in effect pursuant to Section 24-4-103(12.5), C.R.S.