

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division (HMWMD)

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Amendment of Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2 Part 1) – Section 1.7.3

Adopted by the Solid and Hazardous Waste Commission on August 19, 2008:

Basis and Purpose

These amendments to 6 CCR 1007-2, Section 1.7.3 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Sections 25-15-302(4.5) and 30-20-109(2.5), C.R.S.

The purpose of these amendments to Section 1.7.3 is to establish annual fees for recycling facilities that are conducting a recycling operation, as defined in Section 1.2 of the Regulations, and that are not otherwise subject to Solid Waste User Fees as established in 25-16-104.5 C.R.S.

Background

The HMWMD initiated a legislative stakeholder process in October 2006 for the development of language pertaining to House Bill 07 1288. In an effort to support the Bill, draft implementing regulations for Sections 1.7.2 and 1.7.3 were developed, shared, discussed, reviewed, and edited as part of the legislative stakeholder process. After the legislative session, a follow-up stakeholder process was begun in June 2007. Regulations amending Sections 1.7.2 and 1.7.3 of the Solid Waste Regulations, excepting annual fees for recycling facilities, were developed to support implementation of House Bill 07 1288. These regulations were promulgated during the February 2008 rulemaking hearing before the Solid and Hazardous Waste Commission and became effective on April 1, 2008.

Summary of Regulatory Proposal

The Solid Waste and Material Management Unit of the Hazardous Materials and Waste Management Division does not receive any general fund monies. Fees support 100% of unit activities. The fees were historically comprised of two sources including: 1) the Solid Waste User Fees (SWUF) also referred to as the Hazardous Substance Response Fee or tipping fees and 2) hourly activity fees. The SWUF and hourly activity fees were established in statute and regulation respectively. The majority of the fees to support the Solid Waste Unit are derived from the SWUF, which is a fee based on the volume or weight of waste placed at attended solid waste disposal sites and facilities.

As part of the HB 07-1288 legislative stakeholder process a significant majority of the stakeholders in both the legislative and regulatory processes supported the development and implementation of an annual facility fee for solid waste sites and facilities not subject to the SWUF. Through interactive stakeholder negotiations and Statewide discussions, an annual facility fee of \$1,000/year per facility was established for each facility type identified in Section 1.7.3. However, additional stakeholder concerns were raised indicating that the proposed \$1,000/year per facility fee was too burdensome for some recycling facilities.

The annual facility fees were promulgated in Section 1.7.3 of the regulations except for subsections 1.7.3(A)(1)b and 1.7.3(A)(3)d identifying the annual facility fee for operating recycling facilities, and those undergoing post-closure care. These portions of the regulation were "reserved" during the rulemaking hearing to allow additional stakeholder input regarding an appropriate fee amount for the recycling facilities.

The originally proposed annual recycling facility fee of \$1,000/year per facility was proposed for each of the nine facilities that were registered as recyclers during the stakeholder process. This fee would yield \$9,000 dollars in revenue per year from the recycling facilities. Based on information gained in May and June 2008 from the 2007 recycling data survey, the Division has identified approximately 60 facilities within Colorado that qualify as recycling facilities pursuant to 6 CCR 1007-2, Section 8.

In an effort to maintain a simplified fee collection structure and to remain true to our initial goal of generating \$9,000/year in recycling facility revenue, the current amendment identifies an annual recycling facility fee of \$150/year for each of recycling facilities. This will generate \$9,000 in revenue per year. The fee amount and revenue will be evaluated annually with the goal of determining if and how it should be adjusted.

The proposed regulatory amendment with the \$150/year per recycling facility was proposed via email, following evaluation of the data gained via the 2007 recycling facility survey, to the original stakeholder group on June 4, 2008. The email included the original promulgated regulation and Statement of Basis and Purpose along with the proposed amendment and an invitation for comment and conference calls, if requested. The Division specifically requested written comments by June 17, 2008 to facilitate finalization of the proposed regulation. To date, the Division has received one written comment and two phone calls. One phone call requested clarifying language be added to explain that the annual facility fee identified in section 1.7.3 did not apply to facilities that are already subject to the Solid Waste User Fee. Clarifying language was added to Subsection 1.7.3(A) to address this concern. The other requests for information or clarifications were addressed without modifications to the proposed regulation.

In summary, the revised annual recycling facility fee will spread the burden and help off-set the SWUF increases needed to support the unit's activities and efforts.