

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Addition to Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2 Part 1) – Addition of Section 17, Commercial Exploration and Production (EP) Waste Impoundments and Associated Additions to Section 1.2, Definitions

(Adopted by the Solid and Hazardous Waste Commission on November 18, 2008)

Basis and Purpose

Section 9 of the Solid Waste rules, the section under which EP waste impoundments are regulated, was promulgated in 1984. There were minor modifications in 2004 to address unattended facilities that received wastes directly into tanks. HB08-1414 (“the Act”), enacted by the legislature in 2008, directs the Solid and Hazardous Waste Commission to promulgate regulations specifically applicable to commercial exploration and production waste impoundments. The Act prescribes several provisions that these rules must contain, including set-backs, fabricated liners, monitoring to prevent migration to groundwater, waste analysis and reporting, fencing and netting, contingency plans and financial assurance. The Act also specifies a schedule for existing facilities to achieve compliance with the new rules. The Hazardous Materials and Waste Management Division (HMWMD) has prepared a new section, Section 17, to the Regulations Pertaining to Solid Waste Sites and Facilities (the “Regulations”) to implement the Act. In addition to implementing the statutory requirements cited above, the proposed new Section 17 regulations serve to update the existing requirements for EP waste impoundments, currently found in Section 9 of the Regulations. Waste impoundments other than E&P waste impoundments will continue to be covered under Section 9.

Statutory Authority

These regulations are promulgated under the authority of § 30-20-100.5 et seq., C.R.S., specifically § 30-20-109(1.5)(b), C.R.S.

Summary of Regulatory Proposal

The HMWMD initiated a stakeholder process in July 2008. A total of 4 well-attended workgroup meetings were held between July 2008 and September 2008. The waste management industry, local governments, the utility sector, oil and gas service companies, corporations and industry organizations, environmental and engineering consultants, and public interest groups participated in these meetings. The HMWMD held the second stakeholder meeting in Grand Junction to accommodate stakeholders on the Western Slope where the majority of these facilities are located. In addition, the HMWMD accommodated those located in outlying areas of the State by making it possible to participate in these

meetings by conference call and the Internet to view slides and presentation materials. Stakeholders were encouraged to send comments via email at any time during the entire stakeholder process. Major issues arising from the stakeholder process are described below.

1. Issues Encountered During Stakeholder Process:

A. Request for More Time to Study Issues Unique to Utility Impoundments: The HMWMD initiated the stakeholder process with only proposed amendments to the Section 9 (Waste Impoundments) regulations. During discussion with stakeholders, the power and water utility sectors noted that the HMWMD lacked some of the information necessary to revise Section 9 to accommodate their particular types of wastes and impoundments. Commentors indicated that the lack of risk data associated with their facilities and wastes warranted gathering additional information on these waste streams. In addition, they recommended evaluating such information prior to the development of revisions to Section 9. Based on stakeholder feedback, the HMWMD decided to accommodate their comments by establishing a separate, ongoing utility sector stakeholder process to collect and evaluate data related to their wastes and facilities. This work will be completed over the next year and prior to developing new regulations impacting non-EP waste impoundment sites and facilities. HMWMD proceeded with the stakeholder rulemaking process for EP waste facilities, as required by statute, creating the new Section 17. All other non-EP waste impoundment facilities will continue to be regulated under the existing Section 9 regulations, which will be modified later.

B. Feasibility of Statutory Compliance Schedules: One commentor indicated that it was technically infeasible for EP waste facilities to comply with the statute-mandated compliance schedules, and suggested that the Department approach the legislature to amend the time-frames. The HMWMD does not view this issue as being germane to the current rulemaking. Promulgation of rules containing the mandated compliance schedules is a requirement of the HB08-1414 statute, and with these proposed Section 17 regulations, the HMWMD intends to implement all requirements of the statute, including the statutorily-mandated time-frames. Furthermore, the HMWMD believes that compliance with the mandated time-frames is technically feasible. Record reviews conducted by the HMWMD indicate that two separate facilities were able to drain and retrofit a total of three separate impoundments, within a single construction period.

C. Applicability of Section 17 to Solid Waste Facilities that Occasionally Accept EP Waste: One question that arose during the stakeholder process is whether Section 17 applies to solidification basins that accept non-EP waste and occasionally accept EP waste. HB08-1414 applies to all commercial solid waste disposal sites and facilities that accept the deposit of EP waste. These solidification basin facilities would 1) be commercial solid waste disposal sites and facilities and 2) receive EP waste. Therefore, if these facilities receive EP waste, Section 17 would apply to solidification basins.

However, the HMWMD recognizes that there are unique operational characteristics of solidification basins including: 1) the duration of liquid waste storage and treatment is not to exceed 48 hours, 2) the waste must be removed and disposed of at an approved solid waste disposal site and facility immediately upon removal, and 3) the short term liquid retention period results in a lack for constant driving head that would cause migration of liquid through the bottom liner.

2. Addition of New Definitions to Section 1.2 of the Regulations: The Act uses terminology not previously defined in the Regulations. Accordingly, these proposed regulations include

adding definitions for “EP Waste” and “EP Waste Disposal Facility” to Section 1.2 of the Regulations.

3. Clarifications to Section 9: With the creation of a new Section 17 for EP waste impoundments conforming changes are also necessary to the applicability section of the existing Section 9 regulations. Otherwise, two separate sections of the solid waste rules would contain conflicting requirements for this type of facility. These amendments exclude EP waste disposal facilities from regulation under Section 9 and directs regulated entities to the new Section 17 regulations.
4. Grandfathering: One commenter noted that Section 17 requires existing E&P facilities to retrofit their existing impoundments and requests that existing facilities be allowed to operate with existing liners. In the Act, the Legislature required that existing facilities were to re-line their impoundments within two years, or three years if granted an extension by the HMWMD. The requirement to retrofit an existing facility is consistent with other regulatory schemes that require upgrades to bring all facilities in a particular market sector up to current industry standards. If older facilities are allowed to operate with out-dated but less expensive technology, there is a market disadvantage against, and possibly a disincentive to build, newer facilities that are more technically advanced. Section 9 contains a grandfathering provision that has led to regulatory disagreements and operational problems at older facilities. The Act does exempt existing E&P facilities from set-back requirements that they could not reasonably comply with.

The Colorado Court of Appeals ruled in Colorado Dep’t of Public Health and Env’t vs. Bethell, 60 P.3d 779 (Colo. App. 2002), that new requirements may be imposed at existing solid waste disposal facilities.

5. Non-statutory Technical Requirements: The new Section 17 is a significant re-write of the existing impoundment regulations as applied to EP waste impoundments. Section 17 includes provisions for an engineering design and operation plan; design construction and operation requirements; record keeping and reporting requirements; closure requirements; and post-closure care and maintenance. These regulatory criteria are a codification and clarification of existing requirements in various other sections of the regulations. The main intent of the HMWMD for including these requirements in Section 17 is to make the regulations easier to use by specifying these requirements with more detail and clarity all in one place, and by updating the contingency plan provisions. The majority of the stakeholders supported including and clarifying these provisions in the Section 17 regulations.

Alternatives Considered and Why Rejected.

For the statutorily mandated portion of Section 17, no alternatives were considered. The remainder of the provisions clarified and codified existing regulatory requirements as they apply to EP waste impoundment facilities.