

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 16, Disposal of Motorized Equipment Wastes, and Associated Additions to Section 1.2, Definitions

Basis and Purpose

Title 30, Article 20, Part 10, C.R.S. (“the Act”), passed by the legislature in 2005, limits the disposal options for residentially-generated used lead-acid batteries, used oil and waste tires. The Hazardous Materials and Waste Management Division (HMWMD) has prepared a new section, Section 16, to the Regulations Pertaining to Solid Waste Sites and Facilities (“the Regulations”), to fully implement the Act. The objectives of the new Section 16 are twofold. First, Section 16 clarifies certain aspects of the above-referenced statute in order to facilitate its implementation. Also, Section 16 includes recordkeeping requirements for retailers, wholesalers and collection facilities in order to verify proper disposition of these wastes, thus enabling the HMWMD to discharge its enforcement responsibility under Title 30, Article 20, Part 10, § 1009.

In addition to the above new regulations, and resulting from them, under separate statutory authority provided in Title 30, Article 20, Part 1 (Solid Wastes Disposal Sites and Facilities Act), the HMWMD recommends the promulgation of management standards for used lead-acid batteries stored at retailers, wholesalers, or collection facilities.

Statutory Authority

These regulations are promulgated under the authority of §§ 25-1-108(c)(1)(a) and 25-1-109(1)(a), C.R.S., §§ 30-20-100.5, -109 and -113(7), C.R.S., and § 30-20-1001 et seq., C.R.S.

Major Factual and Policy Issues Encountered

The HMWMD initiated a stakeholder process in November 2006. A total of six workgroup meetings were held between November 2006 and March 2007. The waste management industry, local governments, and the auto service sector participated in these meetings. The HMWMD accommodated those located in outlying areas of the state by making it possible to participate in these meetings by conference call. Retailers and waste haulers, two sectors for which the HMWMD had no preexisting contact list, were contacted via telephone and electronic mail. These businesses were encouraged to send comments via email. Significant policy issues arising from the stakeholder process are outlined below.

A) Clarifications of Title 30, Article 20, Part 10, C.R.S.

1. Definitions (Section 1.2 of the Regulations): The Act uses terminology that is not defined, either in statute or in the Regulations. Specifically, the proposed regulations include definitions for “Agent of a Wholesaler,” “Collection Facility,” “Do-It-Yourselfer,” “Do-It-Yourselfer Used Oil Collection Center,” “Recycling Facility” and “Self Certification Checklist.” Definitions for these terms have been added to Section 1.2 of the Regulations. The proposed regulations would also include fourteen terms defined in the Act, which would be added to Section 1.2 of the Regulations.

The HMWMD also proposes adding clarification to the existing statutory definition of “Residentially-generated.” In the Act “residentially-generated” is defined as: “used lead-acid batteries, used oil and waste tires generated by a person.” The Act further defines “Person” as “an individual.” Since the Act applies only to the subset of used lead-acid batteries, used oil and waste tires that are *residentially-generated*, the scope of the Act depends on how one interprets this term. The statutory definition permits more than one interpretation. An important question considered by the stakeholder workgroup was whether the Act applies only to individuals removing these wastes from their personal vehicles at their place of residence, or whether it applies more broadly to encompass locations to which an individual drives a personal vehicle, such as an auto or tire shop, for the removal of one or more of these waste types. In attempting to clarify this question, the HMWMD referred to the legislative declaration and its expression of the intent of the Act. Contained therein is the following statement: “The intent of this legislation is to prevent residentially generated used oil, used lead-acid batteries and waste tires from being disposed of in the solid waste stream, to reduce exposure of the waste haulers and operators to potentially dangerous materials, and to properly handle, re-process, re-refine, or reuse these materials as resources.” Given that the majority of these wastes associated with a personal vehicle are removed at an auto service shop rather than a residence, the HMWMD believes that limiting “residentially-generated” to only those materials removed at a residence would undermine the legislative intent of the Act, as expressed in the legislative declaration. Accordingly, the HMWMD believes that the broad interpretation is more consistent with the intent of the Act, and that “residentially-generated” in this context should include all of these automotive wastes removed from a vehicle put to residential use, regardless of where the wastes were removed. Thus, the regulatory definition proposed herein expands upon the statutory definition to include these wastes from a personal vehicle that are removed at a location other than the residence: “Residentially-generated means used lead-acid batteries used oil, and waste tires generated by a person or from a personal vehicle not used primarily for a commercial or business purpose.”

2. General Provisions: The Act prohibits “land disposal” of residentially generated used lead-acid batteries, used oil and waste tires. Land disposal includes the discarding of these items at a solid waste disposal site and facility, or at a transfer station. The HMWMD has proposed in Section 16.2 for purposes of clarification that discarding these items in a waste receptacle or dumpster be prohibited as well. Without this clarification, these wastes could end up being land disposed.

During discussions with stakeholders, the concern became apparent that the Act would prohibit landfills from serving as collection facilities for recycling. The HMWMD believes such interpretation is erroneous and, in fact, contradicts the intent of the Act. Thus, Section 16.2 proposes language clarifying that landfills and transfer stations are still permitted to serve as collection facilities for recycling of these wastes.

3. Due diligence: The Act permits individuals to dispose of used lead acid batteries, used oil, and waste tires at a solid waste disposal site or facility upon showing that no reasonable recycling options are available. If they can make such a demonstration, they may dispose of these items in a solid waste disposal site or facility or transfer station. This section of the Act contains

significant ambiguity and is the primary reason the HMWMD initiated the drafting regulations to implement the Act. Without a clear definition of what due diligence entails, this provision of the Act would be difficult to implement, for individuals making due diligence determinations, for the solid waste disposal sites and facilities potentially receiving these wastes, and for the HMWMD discharging its enforcement responsibility under the Act. In Section 16.3, the HMWMD proposes language that would require individuals to make some basic inquiries into the options available in their locale, such as making contact with recyclers in the phone directory (if any), the County or Municipality of residence and the local solid waste disposal site or facility or transfer station.

In general, most solid waste disposal facilities have not knowingly accepted used lead-acid batteries or used oil, regardless of the source, for over a decade. Stakeholders raised concern that the Act would be used to force solid waste facilities into accepting these items under the due diligence provision of the Act. In light of this well founded concern, the HMWMD proposes in Section 16.3 to clarify that solid waste facilities retain the right to reject these wastes even if an individual has successfully made a due diligence determination.

Since the Act provides the due diligence option specifically to individuals, the HMWMD is recommending language to clarify that due diligence is not available to collection facilities. A collection facility as defined in the proposed regulations collects these materials for recycling, not for disposal.

4. Waste haulers: The HMWMD proposes that the statutory requirement regarding customer notification be clarified. The HMWMD believes this is not intended as a one-time notification for existing customers occurring on or before July 1, 2007. Rather, the HMWMD interprets this statutory requirement to apply to new customers who may be moving into a service area. Therefore, Section 16 proposes that waste haulers provide for notification of new customers as well. Stakeholders voiced concern a periodic renewal requirement would be unduly expensive to waste haulers, causing them to incur excessive mailing costs. This concern is easily addressed because, as mentioned by some in the industry, waste haulers typically operate on a contract or subscription basis, and the waste prohibition language can easily be added to the appropriate section of the contract, or to the bottom of a billing statement.

B) Used lead-acid battery management standards:

Management and storage of these wastes varies at collection facilities throughout Colorado, and improper management of these wastes can impact public health and the environment. Minimum storage requirements are proposed to ensure that batteries are managed in a manner that prevents the release of waste or waste constituents to the environment. Establishing these standards would not only provide a level playing field for the waste management industry, but also serve to mitigate risks associated with the potential release of lead-acid battery contents to the environment.

Residentially generated lead acid batteries fall under the household hazardous waste exemption from RCRA Subtitle C requirements. Therefore, the proposed management standards found in Sections 16.4 can be viewed as filling a gap in the existing regulatory programs. Used oil management standards are nothing more than a cross reference to another regulatory program because used oil collection facilities are already covered under Part 279 of the Hazardous Waste Regulations.

While the Act does not provide specific authority for the promulgation of standards for the management of used lead acid batteries, the HMWMD is proposing to promulgate these standards under the authority granted in the Solid Wastes Disposal Sites and Facilities Act, 30-

20-102(5) C.R.S. and 30-20-109 C.R.S. The HMWMD has previously chosen not to regulate collection facilities that function as drop-off centers as recycling facilities under Section 8 of the regulations; that is, they are exempted from Section 8 via Section 8.2.7(A). Therefore, because drop-off centers currently have no management standards for used lead acid batteries, the proposed regulations will cover that gap in the regulations.

C) Inspections and self-certification:

The Department has the responsibility for enforcement of the provisions of the Act. This Act has potential to increase the solid waste regulated community by thousands of new entities and by over four million individuals; the HMWMD currently lacks sufficient resources to inspect each of the newly regulated entities. The HMWMD will use its enforcement authority as necessary when facilities are operating in a manner that creates nuisance conditions or violates other provisions of the Regulations. Additionally, given this large number of regulated entities, the HMWMD is proposing self-certification as a necessary enforcement tool to ensure compliance with the Act.

The HMWMD is in the process of implementing self-certification projects, also known as the Environmental Results Program, in other environmental programs within the Department. Self-certification projects build awareness within the regulated community of the applicable regulatory requirements by asking facilities to periodically review the requirements and certify that they are in compliance. This approach has many important advantages: 1) it is a very efficient method for improving compliance rates within a large universe of regulated entities, thus helping to level the economic playing field; 2) it allows precise targeting of follow-up compliance assistance; 3) it allows better targeting of enforcement by helping identify potentially recalcitrant, out-of-compliance facilities; and 4) it serves as a periodic refresher for facility personnel on applicable requirements. The HMWMD has already conducted pilot self-certification projects, and the feedback from the regulated community has consistently been positive – they like the program, the effort is not burdensome, and the benefits are high.

Experience with the program to date has demonstrated that it is much more effective if it is clear to the generator that completing and returning the form is mandatory, not voluntary. Therefore, to ensure that the self-certification process is effective and efficient, the proposed regulation found in Section 16.9.3 establishes mandatory requirements. Section 30-20-113(7) provides authority sufficiently broad to require collection facilities to complete and return self-certification checklists.

D) Overlapping statute and regulations:

Section 16 reiterates certain provisions of the Act as well as provisions of the Hazardous Waste Regulations. The HMWMD believes that this situation, though duplicative, makes the Regulations more useful to stakeholders because all of the requirements appear in one place, rather than having statutory requirements appear only in statute.

Alternatives Considered and Why Rejected

1. Waste industry representatives participating in the stakeholder process suggested having a 1% *de minimis* threshold level for taking action regarding these wastes at a landfill. The suggestion was made out of concerns that operator safety may be compromised if the Act requires retrieval of each and every waste tire, for example, that is discovered by operators at the working face. The HMWMD believes that the Act places emphasis on keeping these wastes out of the waste stream in the first place, through public education by waste haulers and implementation of less invasive waste screening procedures by solid waste facilities. The legislative declaration states

that part of the purpose of the Act is “to reduce exposure of waste haulers and operators to potentially dangerous materials...”

The corollary to having a 1% threshold is that a large volume of tires could end up in the landfill before any action would be triggered under a landfill’s waste characterization plan. Taken as a whole, the waste volume disposed of in Colorado’s solid waste landfills approaches 8.5 million tons annually. Assuming 100 light passenger tires per ton, adoption of a 1% threshold could theoretically allow all whole tires generated in Colorado on an annual tonnage basis to be landfilled. The HMWMD believes there are reasonable and prudent steps that should be taken well below a 1% threshold. For instance, if the operator notices tires showing up regularly in loads from a particular hauler, that fact can be communicated to the hauler so that the hauler can then make sure that the proper notice has been given to their customers. For these reasons, the HMWMD rejected the *de minimis* threshold approach, and instead will address the operator safety issue through enforcement discretion and a preference for non-invasive waste screening methods.

2. Used oil filters: Some participants in the stakeholder group advocated prescriptive requirements for draining used oil filters. This concern focused on the improper draining of oil filters, particularly by do-it-yourselfers inexperienced in used oil management, which could then introduce toxic liquids into the waste stream. The HMWMD prefers to address this concern through best management practices communicated, if necessary, in the form of a guidance document, rather than through prescriptive regulations.

3. Prohibition on disposal of processed waste tires: Some participants in the stakeholder group felt that Section 16 should prohibit landfills from disposing not only of whole waste tires, but of processed waste tires as well. While the plain language of the Act states that whole tires may not be sent to a landfill for disposal, this prohibition does not extend to processed tires. Therefore, the HMWMD believes the Act provides no clear statutory authority to restrict disposal of processed waste tires.