

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2
3
4 **Solid and Hazardous Waste Commission/Hazardous Materials and**
5 **Waste Management Division**

6
7
8 **6 CCR 1007-3**

9
10
11 **HAZARDOUS WASTE**

12
13 **Proposed Amendment of § 268.7 Testing, tracking, and recordkeeping requirements for**
14 **generators, treaters, and disposal facilities.**

15
16
17 **1) Section 268.7 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:**

18
19
20 **§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and**
21 **disposal facilities.**

22
23 (a) Requirements for generators:

24
25 (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land
26 disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40,
27 § 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste
28 determination required in § 262.11 of these regulations, in either of two ways: testing the waste or using
29 knowledge of the waste. If the generator tests the waste, testing would normally determine the total
30 concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of
31 the waste obtained using test method 1311 in "Test Methods for Evaluating Solid Waste,
32 Physical/Chemical Methods," EPA Publication SW 846, (as referenced in incorporated by reference, see
33 § 260.11 of these regulations), depending on whether the treatment standard for the waste is expressed
34 as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively,
35 the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the
36 waste treatment facility must comply with the requirements of § 264.13 of these regulations and
37 paragraph (b) of this section. In addition, some hazardous wastes must be treated by particular treatment
38 methods before they can be land disposed and some soils are contaminated by such hazardous wastes.
39 These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1.
40 These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in
41 a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a
42 generator determines they are managing a waste or soil contaminated with a waste, that displays a
43 hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special
44 requirements of § 268.9 of this part in addition to any applicable requirements in this section.

45
46 (2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses
47 not to make the determination of whether his waste must be treated: ~~W~~with the initial shipment of waste
48 to each treatment or storage facility, the generator must send a one-time written notice to each treatment
49 or storage facility receiving the waste, and place a copy in the file. The notice must include the

50 information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in § 268.7(a)(4) of
51 this section. (Alternatively, if the generator chooses not to make the determination of whether the waste
52 must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number
53 of the first shipment and must state "This hazardous waste may or may not be subject to the LDR
54 treatment standards. The treatment facility must make the determination.") No further notification is
55 necessary until such time that the waste or facility change, in which case a new notification must be sent
56 and a copy placed in the generator's file.

57
58
59 **2) Section 268.7 is amended by revising paragraph (b)(6) to read as follows:**

60
61
62 **§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and**
63 **disposal facilities.**

64
65 *****

66 (b) Treatment facilities must test their wastes according to the frequency specified in their waste
67 analysis plans as required by § 264.13 (for permitted TSDs) or § 265.13 (for interim status
68 facilities). Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of
69 this section.

70
71 *****

72 (6) Where the wastes are recyclable materials used in a manner constituting disposal subject
73 to the provisions of § 267.20(b) regarding treatment standards and prohibition levels, the
74 owner or operator of a treatment facility (i.e., the recycler) ~~is not required to notify the~~
75 ~~receiving facility, pursuant to paragraph (b)(3) of this section. With each shipment of such~~
76 ~~wastes the owner or operator of the recycling facility must, for the initial shipment of waste,~~
77 ~~prepare-submit a one-time certification described in paragraph (b)(4) of this section, and a~~
78 ~~one-time notice which includes the information listed in paragraph (b)(3) of this section~~
79 ~~(except the manifest number), to the Director, or to the Director's delegated representative.~~
80 ~~The certification and notification must be placed in the facility's on-site files. If the waste or~~
81 ~~the receiving facility changes, a new certification and notification must be prepared and~~
82 ~~placed in the on-site files. In addition, the recycling facility must also keep records of the~~
83 name and location of each entity receiving the hazardous waste-derived product.

84
85 *****

86
87 **3) Section 8.87 {Statement of Basis and Purpose for the Rulemaking Hearing of February**
88 **21, 2017} is added to Part 8 of the Regulations to read as follows:**

89
90 **Statement of Basis and Purpose**
91 **Rulemaking Hearing of February 21, 2017**

92
93 **8.87 Basis and Purpose.**

94
95 These amendments to 6 CCR 1007-3, Part 268.7 are made pursuant to the authority granted to the Solid
96 and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

98 **Amendment of § 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters,**
99 **and disposal facilities.**

100
101 These amendments to Section 268.7 clarify the generator waste analysis and notification requirements
102 under RCRA's land disposal restrictions (LDR). Section 268.7(a)(1) is being amended to add a cross
103 reference to § 262.11, in order to reduce duplicative testing requirements and clarify that that the two
104 generator waste analysis functions can be performed concurrently, thus avoiding redundant waste
105 analysis.

106
107 To provide additional flexibility to generators of hazardous waste, § 268.7(a)(1) is also being modified to
108 clarify that if a generator does not want to determine, based on waste analysis or knowledge of the waste,
109 whether the waste must be treated, he may assume that he is subject to the full array of LDR
110 requirements. The generator then must send the waste to a RCRA-permitted hazardous waste treatment
111 facility where the treatment facility must make the determination when the waste has met the LDR
112 treatment standards (possibly even upon receipt as generated). A conforming change is also being made
113 to the notification requirement in § 268.7(a)(2) for such cases.

114
115 Section 268.7(b)(6) is being amended to eliminate the requirement to submit notifications and
116 certifications to the Division, and instead require that the information be placed in the treating/recycling
117 facility's on-site files. In accordance with the requirements of § 268.7(b)(6), facilities (i.e., recyclers) must
118 prepare and maintain notifications and certifications with the initial shipment of waste, and prepare new
119 documentation only if the waste, the treatment process, or the receiving facility changes. Maintaining
120 these records on-site, and available for inspection, provides sufficient documentation of waste treatment,
121 and reduces the burden on the facility.

122
123 These amendments are equivalent to, or less stringent than the existing provisions, and Colorado is not
124 required to adopt these provisions. Nevertheless, the Division believes that these amendments will
125 provide some burden reduction to the regulated community, without compromising human health or
126 environmental protection.

127
128 This Basis and Purpose incorporates by reference the applicable preamble language for the
129 Environmental Protection Agency regulations that were published in the Federal Register at 71 FR
130 16862-16915, April 4, 2006 for which state analogs are being adopted at this time.