

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

4 6 CCR 1007-2

5 PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

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8 Amendment of Section 1.7.3 Annual Fees

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11 1) Section 1.7.3 is amended to read as follows:

12 1.7.3 ANNUAL FEES

13 (A) Applicability:

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17 (1) ~~An operating fee of \$1,000 per year shall be paid annually by s~~ Solid waste disposal sites
18 and facilities ~~regulated under the following Parts~~ that are not ~~subject~~ required to pay the
19 Solid Waste User Fee ~~(section 25-16-104.5, C.R.S.)~~ are required to pay an annual fee
20 ~~(30-20-109(2.5)(a), C.R.S.), except Part 8 as noted below~~ as follows:
- 21
- 22 a. ~~Reserved~~ Unattended landfills that are active and receiving waste - \$1,000.
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 - 24 b. ~~Reserved~~ Unattended landfills¹ in post-closure monitoring and/or maintenance - \$500.
25 ¹Note: Monofill facilities that contain only coal combustion products and landfills
26 owned by municipalities are exempt from this annual fee requirement.
 - 27
 - 28 c. ~~Part 9 (Surface Impoundment Facilities)~~ Facilities with one or more Type A waste
29 impoundments but with no Type B waste impoundments - \$0.
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 - 31 d. Facilities with one or more Type B impoundments - \$1,000.
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 - 33 ~~de. Part 11 (Solid Wwaste Incinerator Ffacilities)~~ - \$1,000,
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 - 35 ~~ef. Part 13 (Medical Wwaste Ffacilities)~~, - \$1,000,
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 - 37 ~~fg. Part 14 (Compost Ffacilities)~~,
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 - 39 i. Class I Composting facilities - \$0,
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 - 41 ii. Class II Composting facilities - \$100,
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 - 43 iii. Class III Composting facilities - \$1,000, and
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 - 45 h. Inactive facilities (facilities that have not accepted waste for more than one year, are
46 not yet closed, and are unattended due to inactivity) that would be subject to the
47 Solid Waste User Fee when active but are not paying the Solid Waste User Fee
48 during this period of inactivity - \$500.
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~~g. Part 18 (Waste Grease Transporters, Facilities, and Personal Users of Waste Grease): Annual fee per Section 1.7.5 of these regulations, and~~

~~h. Unattended facilities regulated under Parts 1 and 2 of these regulations that do not pay fees under section 25-16-104.5, C.R.S., including:~~

~~i. Surface Impoundments,~~

~~ii. Landfills, and~~

~~iii. Monofills~~

(2) ~~With the exception of the facilities listed in Section 1.7.3(A)(1)(h),~~ the facilities listed in Section 1.7.3(A)(1) above are subject to the annual ~~operating~~ fee from the time such facilities first begin operating until final closure is certified ~~and the cessation of post-closure care and monitoring has been approved by the Department in writing.~~ The facilities listed in Section 1.7.3(A)(1)(h) are no longer subject to the Solid Waste User Fee and become subject to the annual fee once they have not accepted new solid waste for more than one year. Facilities shall provide payment to provide of the annual fee for reimbursement of the Department for these costs incurred in tracking, compliance monitoring, compliance assistance, plan review, enforcement, and other recurring activities that are reasonable and necessary to ensure compliance with these regulations.

~~(3) A post-closure fee of \$1,000 per year shall be paid annually by solid waste sites and facilities regulated under the following Parts that are not subject to the Solid Waste User Fee, except Part 8 as noted below:~~

~~a. Part 2,~~

~~b. Part 3,~~

~~c. Reserved~~

~~d. Reserved~~

~~e. Part 9 (Surface Impoundment Facilities),~~

~~f. Part 11 (Solid Waste Incinerator Facilities),~~

~~g. Part 13 (Medical Waste Facilities),~~

~~h. Part 14 (Compost Facilities),~~

~~i. Part 18 (Waste Grease Transporters, Facilities, and Personal Users of Waste Grease): Annual fee per Section 1.7.5 of these regulations, and~~

~~j. Unattended facilities regulated under Parts 1 and 2 of these regulations, including:~~

~~i. Surface impoundments,~~

~~ii. Landfills, and~~

~~iii. Monofills~~

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~~(4) The facilities listed in Section 1.7.3(A)(3) above are subject to the post-closure fee for the duration of the post-closure care period and shall provide payment to provide reimbursement to the Department for those costs incurred in tracking, compliance monitoring, compliance assistance, plan review, enforcement, and other recurring activities that are reasonable and necessary to ensure compliance with these regulations.~~

(3) Facilities that include sub-facilities in more than one of the above subsections (A)(1)(a) - (h) must pay the annual fee associated with each type of facility.

(B) **Payment:** All owners and operators of facilities subject to the fees of this section shall provide timely payment of the annual fees to the Treasurer of the State of Colorado, as provided in this section after being billed for such fees by the Department. All annual fees shall be credited to the Solid Waste Management Fund created in section 30-20-118, C.R.S. If the Department determines that a site or facility is or has been subject to payment of the annual fee requirements subject to subsection (2.5) of this section and has not paid all any portion of the amount of fees due, in addition to any other remedies the Department may have in such circumstances as provided by law, the Department may assess the site or facility an additional fee equivalent to double the amount of the estimated annual fee, without interest, that the site or facility would have paid the Department if the fee had been paid as required by law. A late payment fee of 2% per month or portion thereof shall be assessed on any unpaid balance subject to the limitations of 24-79.5-101, et seq. C.R.S.

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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3 **Solid and Hazardous Waste Commission**

4 **Hazardous Materials and Waste Management Division (HMWMD)**

5 **6 CCR 1007-2**

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8 **STATEMENT OF BASIS AND PURPOSE**
9 **AND SPECIFIC STATUTORY AUTHORITY FOR**

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

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14 Statement of Basis and Purpose:

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16 These amendments to 6 CCR 1007-2, Section 1.7.3, are made pursuant to the authority granted to the
17 Solid and Hazardous Waste Commission (the “Commission”) in Section 30-20-109(2.5), C.R.S.

18
19 The purpose of these amendments to Section 1.7.3 is to establish revised annual fees for facilities that
20 are not required to pay Solid Waste User Fees. Annual fees are established in Section 30-20-109(2.5)(a),
21 C.R.S., and the Solid Waste User Fee is established in Section 25-16-104.5, C.R.S.

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23 Background

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25 All persons who dispose of solid waste at an “attended solid waste disposal site” in Colorado are required
26 to pay a Solid Waste User Fee. § 25-16-104.5(1.5) and (1.7)(a), C.R.S. “Attended solid waste disposal
27 site” is defined in Section 25-16-102(1), C.R.S. as a site established in Article 20, Title 30, Part 1, C.R.S.,
28 at which an attendant is present during normal hours of operation. Because the Solid Waste User Fee is
29 based on volume, an attendant’s presence is typically necessary to account for the amount of solid waste
30 that is being disposed of. The term “attended” also includes facilities where access is limited, monitored
31 and tracked by card keys or gate codes or other access codes.

32
33 “[S]olid waste disposal sites and facilities that are not required to pay [the Solid Waste User Fee]” are
34 subject to “annual fees” set by the Commission pursuant to Section 30-20-109(2.5)(a), C.R.S.¹

35
36 Annual fees established under this section are limited to five thousand dollars per year per facility, and
37 “must be uniform among owners of the same type of, and similarly sized facilit[ies].” Annual fees must
38 take into account the Colorado Department of Public Health and Environment’s (the
39 “Department”/CDPHE) level of effort in regulating the facilities and are used to carry out ~~the~~ its “duties and
40 responsibilities concerning solid waste management.” § 30-20-109(2.5)(c), C.R.S. Monofills which contain
41 coal combustion products are exempt from annual fees. § 30-20-109(2.5)(a), C.R.S.

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¹ There is a slight disconnect between the key terms “attended solid waste disposal site” and “solid waste disposal sites and facilities” in 30-20-101(8) and 25-16-102(1). However, the Commission believes it is reasonable to conclude that an “attended solid waste disposal site” would be equivalent to an attended “solid waste disposal site and facility.”

43 This ~~proposed~~ rule ~~would~~ impacts the following solid waste disposal sites and facilities, which are subject
44 to annual fees:

- 45
- 46 - Solid waste disposal sites and facilities which are not “attended” pursuant to Section 25-16-
47 102(1), C.R.S., including landfills and monofills in post-closure care and sites performing cleanup
48 or corrective action, as well as sites where a person is disposing of their own waste on their own
49 property Section 30-20-102(3), C.R.S.;
- 50
- 51 - Facilities with waste impoundments;
- 52
- 53 - Other types of solid waste facilities including incinerators, ~~composting facilities~~~~composters~~,
54 medical waste facilities;
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- 56 - Inactive facilities which have not commenced closure, but have not been accepting any waste for
57 a period of one year or more.
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59 Discussion of the Regulatory Proposal

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61 In February 2008, the Solid and Hazardous Waste Commission promulgated annual fee regulations in
62 Section 1.7.3 as a result of the passage of House Bill 07-1288. This legislation authorized the
63 assessment of annual fees to be paid by solid waste facilities that are not subject to the volume-based fee
64 charged at operating landfills and other solid waste ~~disposal sites and facilities~~, also known as the Solid
65 Waste User Fee. After a stakeholder process in 2007, annual fees were established for all applicable
66 facilities at a rate of \$1,000/year. Since that time, the regulation has been changed several times, but the
67 basic rate of \$1,000/year has remained the same.

68

69 In 2012, when the Section 9 (Waste Impoundments) regulations were promulgated, the Commission
70 included the following text in the Statement of Basis and Purpose:

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72 The \$1,000/yr [annual] fee will be changed into a tiered scheme based on the ongoing effort of the
73 Solid Waste Program to inspect and otherwise track each type of facility. The new annual fee will
74 include, but not be limited to, consideration of the solid waste generation rate at the facility, the
75 type/toxicity of waste generated, and whether the facility is a Type A or Type B facility. When the fee
76 is changed, it will require a ~~rulemaking~~ by the Solid and Hazardous Waste Commission. It is the
77 Commission’s intent to begin that process and stakeholder involvement after this Section 9 is
78 promulgated. Until then, all annual fees for facilities only regulated by Section 9 (i.e., not subject to
79 other solid waste fees except the hourly fee) will be waived.

80

81 This 2012 excerpt illustrates that the Commission believed that a tiered system for annual fees for certain
82 types of facilities was preferred. However, ~~until today’s rulemaking~~ no tiered system was previously
83 adopted~~has been proposed~~.

84

85 In summary, the ~~proposed~~ ~~rulemaking~~ makes the following changes:

- 86
- 87 1. Overall, this ~~rulemaking~~ maintains annual fees of \$1,000/year for most types of active solid waste
88 disposal sites and facilities that do not pay the SWUF. It decreases the annual fees to \$500/year
89 for all inactive facilities. It also adds several types of facilities to those that are required to pay the
90 annual fee. And finally, it decreases or eliminates the annual fee for some low risk facility types.
- 91
- 92 2. Section 1.7.3(A) – This change combines the original Section 1.7.3(A)(3) into Section 1.7.3(A)(1);
93 and combines the original Section 1.7.3(A)(4) into Section 1.7.3(A)(2). In the previous regulations,
94 annual fees were split into “annual operating fees” (subsections (1) and (2)) and “post-closure
95 fees” (subsections (3) and (4)). Upon review, the Commission does not believe this is needed and
96 this section can be shortened and simplified without any loss of clarity.
- 97

- 98 3. Section 1.7.3(A)(1) – This change removes the phrase “not subject to” and replaces it with “not
99 required to pay.” This change will improve consistency between Section 1.7.3 and 30-20-
100 109(2.5)(a), C.R.S., which states that annual fees may only be established for “solid waste
101 disposal sites and facilities” that are “not required to pay” the Solid Waste User Fee. The
102 Commission interprets this language to mean that annual fees may be established for sites and
103 facilities which are exempt from the Solid Waste User Fee (such as unattended sites and
104 facilities), as well as sites and facilities which are not required to pay the Solid Waste User Fee
105 because they are not actively accepting waste from producers or other persons disposing of solid
106 waste.
107
- 108 4. Section 1.7.3(A)(1)(a) – This change aligns with the previously-described change. It combines
109 existing Section 1.7.3(A)(1)(h)(ii) and Section 1.7.3(A)(3)(j)(ii). This change simplifies language
110 pertaining to the annual fee for unattended, active landfills. This portion of the rule making does
111 not change the existing annual fee amounts for this group of facilities. It is intended that this
112 category of facilities would include drinking water treatment facilities disposing of their own sludge
113 in an on-site monofill.
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- 115 5. Sections 1.7.3(A)(1)(b) – This section of the rule making is the same as the current Sections
116 1.7.3(A)(3)(a) and (b) which have been eliminated.
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118 The Commission intends that this section would only include landfills that remain in post-closure.
119 Once the Hazardous Materials and Waste Management Division (the Division) determines in
120 writing that post-closure care and monitoring can end at a closed landfill, this annual fee would no
121 longer be charged. In addition, the Commission intends that this section would include sites
122 where a) an entity’s own waste has been disposed on their property and has closed in-place and
123 entered post-closure care and monitoring, b) an illegal disposal site has been allowed to close in-
124 place and entered post-closure care and monitoring, and c) other sites that remain in post-closure
125 care and monitoring such as sites undergoing corrective action. The footnote in the proposed
126 regulation also makes clear that monofill facilities that contain only coal combustion products are
127 exempt from the annual fee, consistent with the exemption in Section 30-20-109(2.5)(a), C.R.S.
128 The footnote also exempts unattended landfills in post-closure care and maintenance that are
129 owned by municipalities. All of the facilities in this category are very small and owned by very
130 small towns where payment of a \$500/year annual fee would be overly burdensome. This portion
131 of the rule making proposal represents an overall fee decrease.
132

133 It should be noted here that any type of solid waste disposal sites and facility that closes with
134 waste remaining in place becomes a closed landfill. Therefore, the Commission intends that any
135 solid waste disposal site and facility that closes with waste in place and enters post-closure care
136 and maintenance will become subject to this category of annual fee so long as post-closure care
137 and maintenance is required.
138

- 139 6. Sections 1.7.3(A)(1)(c) and (d) – This change adds two tiers of annual fees for facilities with
140 waste impoundments where the impoundments are only receiving waste generated on-site (one’s
141 own waste on one’s own property). (Waste impoundments receiving wastes generated off-site are
142 subject to the Solid Waste Users Fee.) The lower tier is for facilities with one or more Type A
143 impoundments and no type B impoundments. The fee for this tier of facilities would be \$0. Type A
144 impoundments contain very low risk wastes and the Division does not spend a lot of time and
145 effort providing oversight, assistance, and enforcement at these locations. The upper tier is for
146 facilities with one or more Type B impoundments, which contain higher risk materials and, as a
147 result, require more oversight, assistance and enforcement from the Division. Type B
148 impoundment facilities would be charged a facility-wide annual fee of \$1,000/year. Given that
149 annual fees have been waived for waste impoundments since 2008, the proposal for Type B
150 impoundments to pay an annual fee could be viewed as a fee increase. On the other hand, not
151 charging Type A impoundments any annual fee could be viewed as either a fee decrease or no
152 increase in fees.
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- 154 7. Section 1.7.3(A)(1)(e) and (f) – This change is consistent with other changes aimed at simplifying
155 Section 1.7.3(A). Annual fees for solid waste incinerator facilities and medical waste facilities
156 were previously in Section 1.7.3(A)(1)(d) and (e), respectively, and Section 1.7.3(A)(3)(f) and (g),
157 respectively. Because Sections 1.7.3(A)(1) and Section 1.7.3(A)(3) are being combined, the fees
158 for these facilities now appear in Section 1.7.3(A)(1)(e) and (f). This portion of the rulemaking
159 does not change the existing annual fee amounts for solid waste incinerators and medical waste
160 facilities.
- 161
- 162 8. Section 1.7.3(A)(1)(g) – This rulemaking combines fees for composting facilities into one section
163 and adds three tiers for composting facilities, which align with the three classes of composting
164 facilities found in Part 14 (Composting) of the regulations.
- 165
- 166 a. Class I composting facilities would have an annual fee of \$0. These facilities compost
167 only vegetative wastes and other low-risk materials and have maximum allowable on-site
168 volumes of feedstock and in-process materials. Since these facilities do not consume
169 large amounts of Division staff time, the Commission believes no annual fee is
170 necessary.
- 171
- 172 b. Class II composting facilities have a new proposed fee of \$100. In addition to accepting
173 vegetative wastes and other low risk materials and having the same material volume
174 limits as Class I facilities, Class II facilities can accept manure. Because Class II facilities
175 represent slightly higher risk, and consume relatively small amounts of Division staff time,
176 this rulemaking proposes an annual fee of \$100.
- 177
- 178 c. Class III composting facilities represent the highest risk and, as a result, have the highest
179 proposed annual fee of \$1,000. Class III facilities can accept riskier materials including
180 biosolids, and have no maximum allowable on-site volumes of feedstocks or material in
181 process. These facilities represent a significant effort by the Division providing oversight,
182 assistance, and enforcement, and therefore a fee of \$1,000/year is appropriate.
- 183
- 184 Overall, this part of the proposal also represents a fee decrease, since all of these facilities were
185 previously paying a \$1,000 annual fee.
- 186
- 187 9. Section 1.7.3(A)(1)(h) - This section adds a category of annual fees for inactive facilities,
188 including unattended inactive facilities, that have not been accepting any waste for a period of
189 one year or more and are, therefore, not paying the Solid Waste User Fee. These facilities have
190 not been required to commence closure due to market conditions, pending site improvements or
191 other reasons, but represent a category of facility that consumes quite a bit of Division staff effort.
192 The ~~proposed~~ annual fee for these facilities is \$500. This portion of the ~~proposed~~ rulemaking
193 represents a fee increase, as these facilities are not currently assessed an annual fee. If a facility
194 becomes active again they would begin paying the Solid Waste User Fee and a portion of the last
195 year's annual fee payment would be refunded depending on the date the facility re-opened.
- 196
- 197 10. Section 1.7.3(A)(2) – These changes clarify when the annual fee applies.
- 198
- 199 11. Section 1.7.3(A)(3) – This paragraph clarifies that facilities conducting activities that fall under
200 more than one annual fee category presented in section 1.7.3(A)(1)(a) through (h) owe the
201 annual fee associated with each activity. For example, if a facility is a drinking water treatment
202 facility that has both Type B impoundments and an on-site alum sludge monofill (an unattended
203 landfill), that facility would owe an annual fee of \$2,000/year.
- 204
- 205 12. Section 1.7.3(B) – These changes describe a) that payment of the annual fee will follow receipt of
206 an invoice from the Department, and b) the consequences for when annual fees are not paid,
207 consistent with § 30-20-109(2.7), C.R.S.
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Stakeholder Process

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~~A stakeholder meeting regarding this proposed rulemaking was held on March 18, 2019.~~