

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2

3 **Solid and Hazardous Waste Commission**

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

5 **6 CCR 1007-2**

6

7

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**

12

13

14 Statement of Basis and Purpose:

15

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.

22

23 Background

24

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 (CDPHE) level of effort in

39 regulating the facilities and are used to carry out the its “duties and responsibilities concerning solid waste

40 management.” § 30-20-109(2.5)(c), C.R.S. Monofills which contain coal combustion products are exempt

41 from annual fees. § 30-20-109(2.5)(a), C.R.S.

42

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 impact 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, composters, medical waste facilities;
- 54
- 55 - Inactive facilities which have not commenced closure, but have not been accepting any waste for
56 a period of one year or more.
- 57

58 Discussion of the Regulatory Proposal

59

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

67

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

70

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

79

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

82

83 In summary, the proposed rulemaking makes the following changes:

- 84
- 85 1. Overall, this rulemaking maintains annual fees of \$1,000/year for most types of active solid waste
86 disposal sites and facilities that do not pay the SWUF. It decreases the annual fees to \$500/year
87 for all inactive facilities. It also adds several types of facilities to those that are required to pay the
88 annual fee. And finally, it decreases or eliminates the annual fee for some low risk facility types.
89
- 90 2. Section 1.7.3(A) – This change combines the original Section 1.7.3(A)(3) into Section 1.7.3(A)(1);
91 and combines the original Section 1.7.3(A)(4) into Section 1.7.3(A)(2). In the previous regulations,
92 annual fees were split into “annual operating fees” (subsections (1) and (2)) and “post-closure
93 fees” (subsections (3) and (4)). Upon review, the Commission does not believe this is needed and
94 this section can be shortened and simplified without any loss of clarity.
95
- 96 3. Section 1.7.3(A)(1) – This change removes the phrase “not subject to” and replaces it with “not
97 required to pay.” This change will improve consistency between Section 1.7.3 and 30-20-
98 109(2.5)(a), C.R.S., which states that annual fees may only be established for “solid waste

99 disposal sites and facilities” that are “not required to pay” the Solid Waste User Fee. The
100 Commission interprets this language to mean that annual fees may be established for sites and
101 facilities which are exempt from the Solid Waste User Fee (such as unattended sites and
102 facilities), as well as sites and facilities which are not required to pay the Solid Waste User Fee
103 because they are not actively accepting waste from producers or other persons disposing of solid
104 waste.

- 105
- 106 4. Section 1.7.3(A)(1)(a) – This change aligns with the previously-described change. It combines
107 existing Section 1.7.3(A)(1)(h)(ii) and Section 1.7.3(A)(3)(j)(ii). This change simplifies language
108 pertaining to the annual fee for unattended, active landfills. This portion of the rulemaking does
109 not change the existing annual fee amounts for this group of facilities. It is intended that this
110 category of facilities would include drinking water treatment facilities disposing of their own sludge
111 in an on-site monofill.
- 112
- 113 5. Sections 1.7.3(A)(1)(b) – This section of the rulemaking is the same as the current Sections
114 1.7.3(A)(3)(a) and (b) which have been eliminated.

115

116 The Commission intends that this section would only include landfills that remain in post-closure.
117 Once the Hazardous Materials and Waste Management Division (the Division) determines in
118 writing that post-closure care and monitoring can end at a closed landfill, this annual fee would no
119 longer be charged. In addition, the Commission intends that this section would include sites
120 where a) an entity’s own waste has been disposed on their property and has closed in-place and
121 entered post-closure care and monitoring, b) an illegal disposal site has been allowed to close in-
122 place and entered post-closure care and monitoring, and c) other sites that remain in post-closure
123 care and monitoring such as sites undergoing corrective action. The footnote in the proposed
124 regulation also makes clear that monofill facilities that contain only coal combustion products are
125 exempt from the annual fee, consistent with the exemption in Section 30-20-109(2.5)(a), C.R.S.
126 The footnote also exempts unattended landfills in post-closure care and maintenance that are
127 owned by municipalities. All of the facilities in this category are very small and owned by very
128 small towns where payment of a \$500/year annual fee would be overly burdensome. This portion
129 of the rulemaking proposal represents an overall fee decrease.

130

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

- 136
- 137 6. Sections 1.7.3(A)(1)(c) and (d) – This change adds two tiers of annual fees for facilities with
138 waste impoundments where the impoundments are only receiving waste generated on-site (one’s
139 own waste on one’s own property). (Waste impoundments receiving wastes generated off-site are
140 subject to the Solid Waste Users Fee.) The lower tier is for facilities with one or more Type A
141 impoundments and no type B impoundments. The fee for this tier of facilities would be \$0. Type A
142 impoundments contain very low risk wastes and the Division does not spend a lot of time and
143 effort providing oversight, assistance, and enforcement at these locations. The upper tier is for
144 facilities with one or more Type B impoundments, which contain higher risk materials and, as a
145 result, require more oversight, assistance and enforcement from the Division. Type B
146 impoundment facilities would be charged a facility-wide annual fee of \$1,000/year. Given that
147 annual fees have been waived for waste impoundments since 2008, the proposal for Type B
148 impoundments to pay an annual fee could be viewed as a fee increase. On the other hand, not
149 charging Type A impoundments any annual fee could be viewed as either a fee decrease or no
150 increase in fees.
- 151
- 152 7. Section 1.7.3(A)(1)(e) and (f) – This change is consistent with other changes aimed at simplifying
153 Section 1.7.3(A). Annual fees for solid waste incinerator facilities and medical waste facilities
154 were previously in Section 1.7.3(A)(1)(d) and (e), respectively, and Section 1.7.3(A)(3)(f) and (g),

155 respectively. Because Sections 1.7.3(A)(1) and Section 1.7.3(A)(3) are being combined, the fees
156 for these facilities now appear in Section 1.7.3(A)(1)(e) and (f). This portion of the rulemaking
157 does not change the existing annual fee amounts for solid waste incinerators and medical waste
158 facilities.
159

- 160 8. Section 1.7.3(A)(1)(g) – This rulemaking combines fees for composting facilities into one section
161 and adds three tiers for composting facilities, which align with the three classes of composting
162 facilities found in Part 14 (Composting) of the regulations.
163
- 164 a. Class I composting facilities would have an annual fee of \$0. These facilities compost
165 only vegetative wastes and other low-risk materials and have maximum allowable on-site
166 volumes of feedstock and in-process materials. Since these facilities do not consume
167 large amounts of Division staff time, the Commission believes no annual fee is
168 necessary.
169
 - 170 b. Class II composting facilities have a new proposed fee of \$100. In addition to accepting
171 vegetative wastes and other low risk materials and having the same material volume
172 limits as Class I facilities, Class II facilities can accept manure. Because Class II facilities
173 represent slightly higher risk, and consume relatively small amounts of Division staff time,
174 this rulemaking proposes an annual fee of \$100.
175
 - 176 c. Class III composting facilities represent the highest risk and, as a result, have the highest
177 proposed annual fee of \$1,000. Class III facilities can accept riskier materials including
178 biosolids, and have no maximum allowable on-site volumes of feedstocks or material in
179 process. These facilities represent a significant effort by the Division providing oversight,
180 assistance, and enforcement, and therefore a fee of \$1,000/year is appropriate.
181

182 Overall, this part of the proposal also represents a fee decrease, since all of these facilities were
183 previously paying a \$1,000 annual fee.
184

- 185 9. Section 1.7.3(A)(1)(h) - This section adds a category of annual fee for inactive facilities, including
186 unattended inactive facilities, that have not been accepting any waste for a period of one year or
187 more and are, therefore, not paying the Solid Waste User Fee. These facilities have not been
188 required to commence closure due to market conditions, pending site improvements or other
189 reasons, but represent a category of facility that consumes quite a bit of Division staff effort. The
190 proposed annual fee for these facilities is \$500. This portion of the proposed rulemaking
191 represents a fee increase, as these facilities are not currently assessed an annual fee. If a facility
192 becomes active again they would begin paying the Solid Waste User Fee and a portion of the last
193 year's annual fee payment would be refunded depending on the date the facility re-opened.
194
- 195 10. Section 1.7.3(A)(2) – These changes clarify when the annual fee applies.
196
- 197 11. Section 1.7.3(A)(3) – This paragraph clarifies that facilities conducting activities that fall under
198 more than one annual fee category presented in section 1.7.3(A)(1)(a) through (h) owe the
199 annual fee associated with each activity. For example, if a facility is a drinking water treatment
200 facility that has both Type B impoundments and an on-site alum sludge monofill (an unattended
201 landfill), that facility would owe an annual fee of \$2,000/year.
202
- 203 12. Section 1.7.3(B) – These changes describe a) that payment of the annual fee will follow receipt of
204 an invoice from the Department, and b) the consequences for when annual fees are not paid,
205 consistent with § 30-20-109(2.7), C.R.S.
206

207 Stakeholder Process

208

209 A stakeholder meeting regarding this proposed rulemaking was held on March 18, 2019.
210