

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

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9 6 CCR 1007-3

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11 HAZARDOUS WASTE

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13 Proposed Spill Notification Requirements

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17 1) Section 261.5 is amended by adding paragraph (b)(6) to read as follows:

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20 § 261.5 Special requirements for hazardous waste generated by conditionally exempt small
21 quantity generators.

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24
25 (b) *****

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27 (5) Conditionally exempt small quantity generators shall comply with § 265.31(a) relating to
28 maintaining and operating their facility to minimize the possibility of a fire, explosion, or any
29 unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents.

30
31 (6) A conditionally exempt small quantity generator engaged in any operation or activity which
32 results in a spill or discharge of characteristic or listed hazardous waste subject to these
33 regulations which either may, or has subsequently been determined, to have entered the
34 environment via emission into the air, discharge onto the land or discharge into any surface
35 water or ground water contrary to the provisions of these regulations, shall notify the
36 Department of such discharge or disposal. The requirement to notify applies in all instances
37 where a facility discovers a discharge has entered the environment, regardless of when the
38 discharge is discovered in relation to the actual release date, and regardless of whether the
39 discharge warrants a response under an emergency contingency plan. This requirement to
40 report potential or known releases to the environment shall be conducted pursuant to §
41 262.43(c) of these regulations.

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44 2) Section 262.43 is amended by adding paragraphs (c) – (c)(10) to read as follows:

45
46 § 262.43 Additional reporting.

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50 (c) A generator engaged in any operation or activity which results in a spill or discharge of
51 characteristic or listed hazardous waste subject to these regulations which either may, or has
52 subsequently been determined to, have entered the environment via emission into the air,
53 discharge onto the land or discharge into any surface water or ground water contrary to the
54 provisions of these regulations, shall notify the Department of such discharge or disposal. The
55 requirement to notify applies in all instances where a facility discovers a discharge has entered
56 the environment, regardless of when the discharge is discovered in relation to the actual release
57 date, and regardless of whether the discharge warrants a response under an emergency
58 contingency plan. Within 15 days after the incident or discovery, the generator must submit a
59 written report on the incident or discovery to the Department. The report must include:

60
61 (1) Name, address, and telephone number of the owner or operator;

62
63 (2) Name, address, and telephone number of the facility;

64
65 (3) Date, time, and type of incident (e.g., spill, fire, explosion) or discovery of a release in soil,
66 surface water or ground water;

67
68 (4) Name and quantity of material(s) involved;

69
70 (5) Any data documenting the presence of hazardous waste or hazardous constituents in soil,
71 surface water or ground water;

72
73 (6) The extent of injuries or the potential for people to be exposed, if any;

74
75 (7) An assessment of actual or potential hazards to human health or the environment, where
76 this is applicable;

77
78 (8) Estimated quantity and disposition of recovered material that resulted from the incident;

79
80 (9) Any data that might characterize the extent and magnitude of the release following the
81 initial discovery, if available; and

82
83 (10) For those releases that cannot be fully cleaned up within 15 days after the incident or
84 discovery, the report should describe how the release will be characterized and remediated
85 pursuant to § 100.10(a)(8).

86 **3) Section 264.1 is amended by revising paragraph (g)(8)(iii) to read as follows:**

87
88 **§ 264.1 Purpose, scope and applicability.**

89 *****

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91
92 (g) The requirements of this part do not apply to:

93
94 *****

95
96 (8)(i) Except as provided in paragraph (g)(8)(ii) of this section, a person engaged in treatment or
97 containment activities during immediate response to any of the following situations:

98
99 (A) A discharge of a hazardous waste;

100
101 (B) An imminent and substantial threat of a discharge of hazardous waste;

102
103 (C) A discharge of a material which, when discharged, becomes a hazardous waste.

104
105 (ii) An owner or operator of a facility otherwise regulated by this part must comply with all
106 applicable requirements of Subparts C and D.

107
108 (iii) Any person who is covered by paragraph (g)(8)(i) of this section and who continues or
109 initiates hazardous waste treatment or containment activities after the immediate response is over
110 is subject to all applicable requirements of this part, **unless the activities are conducted under**
111 **a Division-approved Corrective Action Plan prepared in accordance with § 100.26**
112 **authorizing corrective action or closure activities at a non-permitted facility.**

113
114 (iv) In the case of emergencies involving military munitions, the responding military emergency
115 response specialist's organizational unit must retain records for three years identifying the dates
116 of the response, the responsible persons responding, the type and description of material
117 addressed, and its disposition.

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122 **4) Section 265.1 is amended by revising paragraph (c)(11)(iii) to read as follows:**

123
124 **§ 265.1 Purpose, scope, and applicability.**

125
126 *****

127
128 (c) The requirements of this part do not apply to:

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130 *****

131
132 (11)(i) Except as provided in paragraph (c)(11)(ii) of this section, a person engaged in treatment or
133 containment activities during immediate response to any of the following situations:

134
135 (A) A discharge of a hazardous waste;

136
137 (B) An imminent and substantial threat of a discharge of a hazardous waste;

- 139 (C) A discharge of a material which, when discharged, becomes a hazardous waste.
140
141 (ii) An owner or operator of a facility otherwise regulated by this part must comply with all
142 applicable requirements of Subparts C and D.
143
144 (iii) Any person who is covered by paragraph (c)(11)(i) of this section and who continues or
145 initiates hazardous waste treatment or containment activities after the immediate response is over
146 is subject to all applicable requirements of this Part, unless the activities are conducted
147 under a Division-approved Corrective Action Plan prepared in accordance with § 100.26
148 authorizing corrective action or closure activities at a non-permitted facility.
149
150 (iv) In the case of emergencies involving military munitions, the responding military emergency
151 response specialist's organizational unit must retain records for three years identifying the dates
152 of the response, the responsible persons responding, the type and description of material
153 addressed, and its disposition.

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159 **5) Part 99 is amended by adding paragraph (f) to read as follows:**

160
161 **PART 99 - NOTIFICATION**

162 *****

163
164
165 **(f) Any person engaged in any operation or activity which results in a spill or discharge of**
166 **characteristic or listed hazardous waste subject to these regulations which may enter the**
167 **environment via emission into the air, discharge onto the land or discharge into any surface water**
168 **or ground water contrary to the provisions of these regulations, as soon as the person has**
169 **knowledge thereof, shall notify the Department of such discharge or disposal.**
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173 **6) Section 100.10 is amended by revising paragraph (a)(8) to read as follows:**

174 **§ 100.10 SCOPE OF THE RCRA PERMIT REQUIREMENT. Who must apply?**

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179 **(a) Specific exclusions from the RCRA permit requirement:**

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182
183 (8) Persons who carry out activities to immediately contain or treat a discharge, or an imminent and
184 substantial threat of a discharge, of hazardous waste or material which, when discharged, becomes a
185 hazardous waste. After the immediate response activities are completed, any treatment, storage, or
186 disposal of discharged material or discharge residue or debris that is undertaken must be covered by
187 a RCRA permit, an emergency RCRA permit or ~~or~~ an interim status corrective action order
188 pursuant to § 265.5. Facilities subject only to the corrective action or closure requirements of
189 Part 264 or Part 265 may alternatively use an enforceable document pursuant to § 100.10(d), or
190 a Corrective Action Plan pursuant to § 100.26. In the case of emergency responses involving

191 military munitions, the responding military emergency response specialist's organizational unit must
192 retain records for three years identifying the dates of the response, the responsible persons
193 responding, the type and description of material addressed, and its disposition.

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199 **7) Section 100.10 is amended by adding paragraph (e) to read as follows:**

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201
202 **§ 100.10 SCOPE OF THE RCRA PERMIT REQUIREMENT. Who must apply?**

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205
206 **(e) Corrective Action Plans. At the Department's discretion, an owner or operator may obtain a**
207 **Corrective Action Plan in accordance with § 100.26 authorizing corrective action or closure**
208 **activities at a non-permitted facility to satisfy the permitting requirements of this Part 100.**
209

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211
212 **8) Section 100.26 is amended by adding paragraph (e) to read as follows:**

213
214 **§ 100.26 Corrective Action Plan.**

215
216 (a) The owner or operator of a hazardous waste facility that is subject to the corrective action or closure
217 requirements of Part 264 or Part 265, but that does not currently have a treatment, storage or disposal
218 permit, may submit an application for a Corrective Action Plan to conduct corrective action or closure.
219 Applications for such plans may be for entire facilities or portions thereof. **An approved Corrective**
220 **Action Plan serves as a permit for the facility.**
221

222 *****
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226 **9) Section 8.85 {Statement of Basis and Purpose for the Rulemaking Hearing of February**
227 **16, 2016} is added to Part 8 of the Regulations to read as follows:**

228
229 **Statement of Basis and Purpose**
230 **Rulemaking Hearing of February 16, 2016**

231
232 **8.85 Basis and Purpose.**

233
234 These amendments to 6 CCR 1007-3, Parts 261, 262, 264, 265, 99 and 100 are made pursuant to the
235 authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

236
237 These amendments modify Parts 261, 262, 264, 265, 99 and 100 of the Colorado Hazardous Waste
238 Regulations (6 CCR 1007-3) to: 1) require generators and any other party engaged in any operation or
239 activity which results in a spill or discharge of characteristic or listed hazardous waste subject to the
240 regulations to notify the Division of such discharge or disposal; and 2) to clarify that Corrective Action
241 Plans (CAPs) are permits and can serve in place of traditional RCRA permits for corrective action and
242 closure activities.

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Proposed Spill Notification Requirements

The requirement to notify applies in all instances where a facility discovers a discharge has entered the environment, regardless of when the discharge is discovered in relation to the actual release date, and regardless of whether the discharge warrants a response under an emergency contingency plan.

In accordance with additional reporting requirements of § 262.43(c), a generator must submit a written report on the incident or discovery to the Department with 15 days after the incident or discovery of the incident. The report must include the following information:

- (1) Name, address, and telephone number of the owner or operator;
- (2) Name, address, and telephone number of the facility;
- (3) Date, time, and type of incident (e.g., spill, fire, explosion) or discovery of a release in soil, surface water or ground water;
- (4) Name and quantity of material(s) involved;
- (5) Any data documenting the presence of hazardous waste or hazardous constituents in soil, surface water or ground water;
- (6) The extent of injuries or the potential for people to be exposed, if any;
- (7) An assessment of actual or potential hazards to human health or the environment, where this is applicable;
- (8) Estimated quantity and disposition of recovered material that resulted from the incident;
- (9) Any data that might characterize the extent and magnitude of the release following the initial discovery, if available; and
- (10) For those releases that cannot be fully cleaned up within 15 days after the incident or discovery, the report should describe how the release will be characterized and remediated pursuant to § 100.10(a)(8).

Currently there is no requirement in the Colorado Hazardous Waste Regulations to notify the Department of such releases or to clean up releases in a timely manner. By requiring this notification, the Department will have the opportunity to work with the facility owner/operator sooner so as to quickly respond to the releases of chemical contamination in an effort to minimize or eliminate long-term impacts to environmental media. Responding to these discoveries sooner has several advantages: a) minimizing the quantity and extent of the contaminated area; b) expediting remedial activities; c) reducing expenses by limiting the impacted area from a quicker response; and d) increasing the overall likelihood of successful remediation. The Department is presently notified of releases at one to two dozen sites per year, primarily as a result of Phase II due diligence investigations conducted in advance of a property sale or refinancing. The Department does not anticipate these rule changes will significantly increase this reporting rate. Rather, it should prompt timely reporting of spills, leaks and other non-emergency incidents.

The adopted amendments regarding additional notification requirements are:

- 295 1) Addition of paragraph (b)(6) to § 261.5 (Special requirements for hazardous waste generated by
296 conditionally exempt small quantity generators (CESQGs)). CESQGs are presently not required
297 to report releases to the Department even though many of the reported releases originate at this
298 category of site.
299
- 300 2) Addition of paragraph (c) to § 262.43 (Additional reporting for Generators of Hazardous Waste).
301 Presently both large and small quantity generators are required to comply with Part 265, Subpart
302 D contingency plan requirements. This includes immediately notifying the National Response
303 Center, followed by the Department within 15 days of implementing their contingency plan in
304 response to a fire, explosion, or any unplanned sudden or nonsudden release of hazardous
305 waste or hazardous constituents to air, soil, surface or ground water at the facility. However, this
306 requirement does not apply to sudden and nonsudden spill incidents of products becoming
307 hazardous waste upon contact with environmental media. Nor does this requirement apply to
308 ongoing, nonsudden releases that don't necessarily trigger implementation of a contingency plan.
309 Nonsudden releases are often overlooked by the regulated community as emergency incidents
310 requiring immediate action, prolonging notification of the facilities' release discovery to the
311 Department for months and, in some cases, years. This new paragraph (c) establishes an
312 affirmative duty on all generators to report any release of hazardous waste or hazardous
313 materials contaminating environmental media which, in turn, will facilitate prompt corrective
314 action. As noted previously, this should not necessarily increase the number of incidents
315 reported, just the speed with which the Department learns of the events.
316
- 317 3) Addition of paragraph (f) to Part 99 (Notification). Part 99 prohibits hazardous waste subject to the
318 regulations from being generated, transported, treated, stored, or disposed unless prior
319 notification has been given as required under this part. The addition of paragraph (f) to Part 99 is
320 meant to broaden that notification requirement to include new and historic releases that constitute
321 disposal under the Colorado Hazardous Waste Act, the contamination from which, unlike the
322 other cited activities, can have significant and long lasting consequences.
323

Clarifying Corrective Action Plans are Permits

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325
326 In 1999, the Commission adopted § 100.26 to the Regulations establishing the Corrective Action Plan
327 (CAP) as an alternative to a formal RCRA permit. At that time, the Commission expressly stated its intent
328 was to "create a streamlined *permit* authorizing corrective action or closure at non-permitted facilities."
329 *Statement of Basis and Purpose for Rulemaking Hearing of April 20, 1999, 6 CCR 1007-3 §8.38.*
330 Nonetheless, confusion evolved within the regulated community regarding whether a CAP is in fact a
331 permit subject to Department enforcement authority pursuant to § 25-15-308, C.R.S. The following
332 amendments clarify CAPS are Permits:
333

- 334 1) Addition of paragraph (e) to § 100.10 (Scope of the RCRA Permit Requirement). Section 100.10
335 of the regulations identifies enforceable mechanisms an operator of a facility and the Department
336 can use to either close or conduct post-closure care for a hazardous waste management unit in
337 lieu of a formal RCRA permit. Paragraph (e) specifies CAPS are included as an alternative to a
338 formal RCRA permit. Pursuant to § 100.26, CAPS provide operators with a streamlined process
339 to obtain an enforceable mechanism governing remedial activities. The CAP provisions are far
340 less onerous compared to the process for obtaining a formal RCRA permit outlined in the
341 remainder of Part 100.
342
- 343 2) Amendment of paragraph (a) of § 100.26 (Corrective Action Plan). The amendment to § 100.26
344 explicitly states an approved CAP serves as a permit for a facility engaging in corrective action
345 activities. In a number of instances, facility operators were not aware of this distinction, and
346 mistakenly perceived activities pursuant to CAPs as "voluntary" in nature. Despite this
347 misperception, the Department consistently requires facilities to complete CAP obligations, and

348 on multiple occasions was forced to utilize significant state resources pursuing formal
349 enforcement actions to gain CAP compliance. The added language clarifies CAPS are formal
350 permits and eliminates the notion that activities specified in CAPS are voluntary.

351
352 3) Amendment of § 264.1(g)(8)(iii) and § 265.1(c)(11)(iii). Section 264.1(g)(8)(iii) and §
353 265.1(c)(11)(iii) of the regulations presently state that hazardous waste treatment or containment
354 activities conducted after the immediate response to a release are subject to all applicable
355 permitting requirements. Amending 264.1(g)(8)(iii) and 265.1(c)(11)(iii) is meant to give operators
356 yet another enforceable mechanism that they can use to complete remedial activities in lieu of a
357 formal RCRA permit.

358
359 These amendments are more stringent than the federal regulations. The Commission has evaluated the
360 information presented at the rulemaking hearing, as well as the information in the Statement of Basis and
361 Purpose. The Commission considers this information sufficient to justify adopting the proposed rule. The
362 Commission finds that this rule is necessary to protect public health and the environment.