

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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

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6 **6 CCR 1007-2**

7 **PART 1 REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES**

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9 **Amendment of Section 9.1.2(B) – Elimination of Partial Exemption for Impoundments**
10 **Managing Coal Combustion Residuals (CCR)**

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13 **1) Section 9.1.2 (Exemptions) is amended by deleting paragraph (B) as follows:**

14 **Section 9**

15 **Waste Impoundments**

16 **9.1.2. EXEMPTIONS**

17 (A) *********

18 (B) **Reserved**~~Impoundments containing only coal combustion residuals (CCR impoundments)~~
19 ~~potentially subject to the proposed rule of the U.S. Environmental Protection Agency (USEPA),~~
20 ~~published at 75 Fed. Reg. 35127 (June 21, 2010), are not subject to Sections 9.1.0, 9.2, and 9.3~~
21 ~~of this Section 9.~~
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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**
11 **Part 1) – Section 9.1.2(B) – Elimination of partial exemption for waste impoundments**
12 **managing coal combustion residuals (CCR)**
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14 **Basis and Purpose**

15 This amendment to 6 CCR 1007-2, Section 9.1.2(B) is made pursuant to the authority granted to
16 the Solid and Hazardous Waste Commission in Sections 25-15-302(4.5) and 30-20-109, C.R.S.

17 The purpose of this amendment to Section 9.1.2 is to eliminate the partial exemption at Section
18 9.1.2(B) for waste impoundments that manage and contain coal combustion residuals (CCR).

19 **Background**

20 On February 12, 2012, the Solid and Hazardous Waste Commission (the “Commission”) adopted
21 new Section 9 (Waste Impoundments) regulations for surface impoundments managing solid
22 waste. The purpose of the 2012 amendments was to update the existing Section 9 regulations
23 that were promulgated in 1984.

24 The 2012 amendments included a partial exemption at Section 9.1.2(B) for impoundments that
25 manage and contain coal combustion residuals (CCR impoundments) from the requirements of
26 Section 9.1.9 (Timing of Submittal of an Engineering Design and Operation Plan); Section 9.2
27 (Requirements for Type A Waste Impoundments); and Section 9.3 (Requirements for Type B
28 Waste Impoundments).

29 At the time of the Commission’s adoption of the 2012 amendments, EPA was still evaluating
30 comments on their proposed rule on whether to require that CCR impoundments be managed
31 under national solid waste standards or under hazardous waste standards. Pursuant to Section
32 9.1.2(B), CCR impoundments were provided an exemption based on an assumption that
33 impoundments potentially subject to the proposed rule of the U.S. Environmental Protection
34 Agency (EPA) published in the Federal Register on June 21, 2010 {75 FR 35127} would be
35 regulated by the state under a pending CCR-specific regulation.

36 On April 17, 2015, the EPA published a final rule {80 FR 21302-21501} in the Federal Register to
37 regulate CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act
38 (RCRA). The April 17, 2015 final rule established nationally applicable minimum criteria for the
39 disposal of CCR in landfills and surface impoundments.

40 Following issuance of the federal rule, the Hazardous Materials and Waste Management Division
41 (the "Division" or "HMWMD") initiated a stakeholder process for the development of applicable
42 state regulations for the management of CCR. As part of the stakeholder process, the Division
43 issued draft Section 19 regulations on January 4, 2016, and held four stakeholder meetings
44 between January and April 2016 to discuss the proposed regulations.

45 On June 10, 2016, the Division received a letter from the Colorado Utilities Coalition with
46 extensive comments and proposed changes to the Division's draft Section 19 regulations. The
47 Colorado Utilities Coalition's letter represented all of the power utilities in Colorado that would be
48 affected by the proposed regulations.

49 After consideration of the comments received during the stakeholder process, the Division
50 decided to suspend its efforts on the rulemaking process for the proposed Section 19 regulations.
51 The stakeholders agreed to this suspension of efforts.

52 Summary of Regulatory Proposal

53 This amendment to Section 9.1.2(B) eliminates the partial exemption for waste impoundments
54 that manage CCR. CCR facilities and waste management units will continue to be regulated
55 under Sections 1,2, 3 and 9 of the state Solid Waste Regulations (6 CCR 1007-2). Existing state-
56 approved Engineering Design and Operations Plans (EDOPs) will remain in effect and are not
57 superseded by the federal CCR rule. The Division will continue to work with facilities to consider
58 proposed modifications to the existing EDOPs to better integrate and avoid possible
59 inconsistencies between provisions in state-approved EDOPs and requirements of the federal
60 CCR rule.