

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission Hazardous

Materials and Waste Management Division 6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Amendment to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) - Section 4 (Table of Contents), Section 4.6.7 (Local Government Financial Test) and Section 4.6.9 (Local Government Guarantee).

Basis and Purpose

I. Statutory Authority

These amendments to 6 CCR 1007-2, Part 1 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 30-20-104.5, C.R.S and § 30-20-109, C.R.S.

II. Purpose of revised regulations:

The purpose of the current Part 4 of the solid waste regulations is to provide assurance that funds will be available to the Department when needed for adequate closure and post-closure of, and corrective action at, solid wastes disposal sites and facilities should the owner and operator become financially insolvent. These regulations require the owners and/or operators to estimate the costs of closure, post-closure and corrective action assure financial responsibility for those costs through any of nine mechanisms: trust fund, letter of credit, surety bond, insurance, corporate financial test, local government financial test, corporate guarantee, local government guarantee, and certificate of deposit.

The purpose of revising 6 CCR 1007-2 Part 1 (the Regulations) is to provide clarity and remove language found to be irrelevant in subsections.

Discussion of Regulatory Proposal

Modifications to Section 4.6.7 - Local Government Financial Test

Section 4.6.7 allows local governments that own and/or operate a solid waste disposal site to use a financial test to demonstrate financial assurance for closure, post-closure and corrective action cost up to a specified maximum limit. As it currently stands, local governments are required to submit multiple forms of documentation which determines whether they pass or fail the financial test. To simplify this process, the CDPHE will require the submission of the Comprehensive Annual Financial Report (CAFR). The overall suggested changes will enhance the efficiency of the submission/review process and the cumbersome administrative processes that burden local government owners and operators.

The proposed rule changes consist of amending and clarifying criteria associated with the four components outlined below:

1. Financial Component

Based on this section, the local government must satisfy either the bond rating requirement or the financial ratio alternative. The proposed changes would be to eliminate the subsections (1)(a)(b)(i)(ii) and (3)(a)(b)(c)(d).

2. Public Notice Component

This section states that the local government must disclose, within its annual budget or financial report, the estimated costs of its closure, post-closure, and corrective action obligations. The proposed changes are to provide clarity and remove language found to be irrelevant in subsection (B).

3. Recordkeeping and Reporting Requirements

A local government must review its financial situation every year and must demonstrate they have the means for closure, post-closure, and corrective action costs. The local government must also place this information into the facilities operating record. The proposed changes are to provide clarity and remove language to be found irrelevant in subsection (C).

4. Calculation of Cost to be Assured

Currently, the financial test limits the amount of closure, post-closure, and corrective action costs for which a local government may demonstrate financial assurance through the use of the test, in proportion to a local government's financial capacity as represented by its annual revenues. The proposed changes would be to eliminate the subsections (D)(1)(2)(3).

Eliminate Section 4.6.9 - Local Government Guarantee

Section 4.6.9 allows local governments to guarantee the closure, post-closure and corrective action costs of other solid waste disposal site owners and operators through the use of the financial test. The local government guarantor would assume responsibility for the obligations of the owner or operator if the owner or operator fails to do so, and provide proof that it passes the financial test requirements. However, if a privately owned facility fails to operate its landfill appropriately, this would be a financial risk to the local government. The proposed changes would be to eliminate this entire section.

Description of Local Government Involvement in the Stakeholder Process

Executive Order D 2011-005 (EO5), "Establishing a Policy to Enhance the Relationship between State and Local Government" requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. Stakeholders were notified by e-mail of the revision of these regulations. We hosted one Stakeholder meeting to discuss the proposed changes on January 16, 2020. Stakeholders were given an opportunity to provide any comments. These amendments would impact local government and municipalities that own and operate a solid waste disposal site and facility, and currently use the local government financial test (Section 4.6.7) or local government guarantee (Section 4.6.9) of the Solid Waste Regulations.

Issues Encountered During Stakeholder Process:

We received positive feedback on the proposed changes from the Stakeholders. There was one suggestion to change the submission deadline from six to seven months after the local government fiscal year-end.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Agencies.