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Colorado Department
of Public Health
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Water Quality Control Division and Hazardous Materials and Waste Management Division Solid Waste Program Coordination on Regulation of Groundwater Impacts Under SB-181

The Solid Waste Program in the Hazardous Materials and Waste Management Division (HMMWMD) and the Discharge Permit Program in the Water Quality Control Division (WQCD) have agreed on respective roles for interfacing on jurisdictional issues relating to SB-181. Both divisions have authority to regulate a given activity that may impact ground water and the statute provides flexibility to determine which division will regulate that activity.

Background: The Solid Waste Program (SWP) regulates fixed and permanent solid waste sites and facilities. Some of these facilities place waste in or on the ground – surface impoundments, landfills, composting operations, etc. However, these facilities are specifically designed to contain the solid waste in or on the ground in a manner that protects human health and the environment. The SWP does not allow “uncontained” disposal or discharge of solid waste to the ground unless such discharge is otherwise regulated under a WQCD discharge permit

The Solid Waste Act (CRS 30-20-101) requires solid waste sites and facilities to acquire a Certificate of Designation (CD) issued by the local governing authority prior to operation (except for one’s own waste on one’s own property). In the case where an entity is disposing of its own waste on its own property, a CD is not required, but the entity is still required to meet the substantive technical requirements required by the Solid Waste Act and its implementing regulations. HMWMD provides the technical review for any solid waste site or facility CD application and recommends approval or denial to the local governing authority. Therefore, the SWP is a “dual authority” system. Both HMWMD and the local governing authority have responsibility for implementation of the program. However, for the purposes of SB-181, HMWMD is an implementing agency for water quality standards adopted by the Water Quality Control Commission (Commission) relative to solid wastes.

In contrast to the solid waste requirements, the discharge permit program in the WQCD does allow for land application, through treatment or disposal, of certain pollutant-containing waters. Such permits include conditions necessary to ensure that water quality standards adopted by the Water Quality Control Commission will be met. This is true even though pollutant-containing waters would otherwise meet the definition of solid waste.

Therefore, to avoid both the possibility of dually regulating water discharges under both solid waste and permitting authorities or of neither program regulating activities that are clearly within one or both sets of authority, HMWMD and WQCD will interface as follows:

1. HMWMD/Solid Waste will take authority for and regulate facilities that are discharging waste waters into surface impoundments or other engineered units, even those designed for purposeful seepage (no liner or seeping liner). These facilities are or resemble the fixed solid waste facilities currently regulated through Certificates of Designation (CDs). Using this approach, the SWP could ensure protection of human health and the environment through engineered design and operation. This includes waste water impoundments at drinking water treatment facilities.
2. HMWMD/Solid Waste will take authority for and regulate facilities that are undergoing some type of SWP-approved remedial action or cleanup of contamination.
3. WQCD/Discharge Permits will take authority for and regulate fixed and non-fixed/transient facilities that are discharging waste waters through land application or otherwise discharging waste waters to the ground (irrigation, dust-suppression, beneficial use, power washing, etc.). Discharges from these types of facilities are uncontained and protection of water quality is determined either through meeting water quality standards prior to discharge (land disposal) or meeting discharge standards at monitoring wells at the point of compliance (land treatment).
4. WQCD/Discharge Permits will regulate discharges from domestic wastewater treatment works which are exempt from the Solid Waste Act.

Even with this delineation of authority, extensive coordination needs to continue to occur between the HMWMD and WQCD staff. Both divisions will work together to modify their existing MOU relative to SB 181 to reflect this approach for clarity to respective staffs as well as to the regulated community. In addition, both divisions will work together on other useful tools, such as development of industry sector BMPs and development of “general permit” provisions for certain sectors.

Obviously, there may be facilities proposed by industry that do not neatly fit into any of the above categories. These will take a case-by-case evaluation by both WQCD and HMWMD staff to determine the appropriate regulatory path.