



COLORADO

Solid & Hazardous
Waste Commission

Department of Public Health & Environment

NOTICE OF PROPOSED RULE-MAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the repeal of 5 CCR 1003-7, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Repeal of 5 CCR 1003-7 - Beneficial Use of Water Treatment Sludge and Fees Applicable to the Beneficial Use of Sludges

These modifications are made pursuant to the authority granted to the Board of Health and transferred to the Solid and Hazardous Waste Commission in Section 30-20-109, and Section 30-20-109(4)(a) C.R.S. The Water Quality Control Commission has similar authorities and has adopted regulations related to beneficial uses in regulations at 5 CCR 1002-64. Therefore, the purpose of this repeal is to remove this redundant and obsolete regulation.

Any alternative proposals for rules or written comments relating to the proposed repeal of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed repeal or alternatives. **The Commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, 4300 Cherry Creek Dr. South, 5th Floor, Building A, Denver, CO 80246-1530, or via email to brandy.valdezmurphy@state.co.us by Friday, January 23, 2015 at 5:00 p.m. Written materials submitted in advance will be distributed to the Commission members prior to the day of the hearing. Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged. Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.**

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rule-making was submitted to the Secretary of State on December 15, 2014. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rule-making in the Colorado Register on December 25, 2014.

The proposed rulemaking materials may also be accessed at <https://www.colorado.gov/pacific/cdphe/shwc-rulemaking-hearings> or the Solid and Hazardous Waste Commission Office, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, 5th Floor, Building A, Denver, CO 80246-1530.



HEARING SCHEDULE:

DATE: Tuesday, February 17, 2015
TIME: 9:30 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246

Oral testimony at the hearing regarding the proposed repeal may be limited.

Michael Silverstein, Commission Administrator



1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

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

4 **5 CCR 1003-7**

5 **BENEFICIAL USE OF WATER TREATMENT SLUDGE AND FEES APPLICABLE TO**
6 **THE BENEFICIAL USES OF SLUDGES**

7
8
9 **Repeal of the Regulations pertaining to the Beneficial Use of Water Treatment**
10 **Sludge and Fees Applicable to the Beneficial Uses of Sludges (5 CCR 1003-7)**

11
12
13 **1) 5 CCR 1003-7 (Beneficial Use of Water Treatment Sludge and Fees Applicable**
14 **to the Beneficial Uses of Sludges) is being repealed in its entirety as follows:**

15
16 ~~**1. GENERAL PROVISIONS**~~

17
18 ~~**A. Purpose**~~

19
20 ~~The purposes of these regulations are to ensure that the quality of waste discharged on land for beneficial~~
21 ~~uses is reasonably consistent with the protection of the public health and to establish rules and~~
22 ~~regulations for the engineering, design and operation of water treatment sludge disposal sites and~~
23 ~~facilities which serve the purposes set forth in C.R.S. 1973, 30-20-109 and 25-1-107 (as amended).~~
24 ~~Water treatment sludge disposal sites and facilities for which a Certificate of Designation has been issued~~
25 ~~are exempted from the provisions of these regulations.~~

26
27 ~~These regulations also provide the regulatory framework to allow implementation of the sludge~~
28 ~~management program for system pursuant to C.R.S. 1986, 30-20-110.5.~~

29
30 ~~**B. Definitions**~~

31
32 ~~As used in these regulations, unless the context otherwise requires:~~

33
34 ~~(1) "APPLICATION SITE" means all contiguous areas of a user's property intended for sludge~~
35 ~~applications.~~

36
37 ~~(2) "APPLY" means to place onto or into the soil till zone.~~

38
39 ~~(3) "BENEFICIAL USE" means the use of the nutrients and/or moisture in the sludge to act as a soil~~
40 ~~conditioner or low grade fertilizer for the promotion of vegetative growth on the land.~~

41
42 ~~(4) "BENEFICIAL USE CERTIFICATION" means the Department's written approval indicating the~~
43 ~~conformance of a proposed beneficial use of water treatment sludge with the criteria contained in~~
44 ~~this regulation.~~

45
46 ~~(5) "BENEFICIAL USE PLAN" means the written application for Department authorization to land~~
47 ~~apply water treatment sludges.~~

48 ~~(6) "BIOSOLIDS" means the accumulated residual product resulting from a domestic wastewater~~
49 ~~treatment works. Biosolids does not include grit or screenings from a wastewater treatment~~
50 ~~works, grease, commercial or industrial sludges, or domestic or industrial septage. Beneficial use~~
51 ~~of biosolids is regulated under the Colorado Biosolids Regulations.~~

52
53 ~~(7) "BOARD" means the State Board of Health.~~

54
55 ~~(8) "CO APPLICATION" means to application of both biosolids and water treatment sludges to the~~
56 ~~same beneficial use site. Co application of biosolids and water treatment sludge is subject to the~~
57 ~~requirements of the Colorado Biosolids Regulations.~~

58
59 ~~(9) "DEPARTMENT" means the Colorado Department of Health.~~

60
61 ~~(10) "FERTILIZER" means any organic or inorganic material that is added to the soil to supply~~
62 ~~elements essential to plant growth.~~

63
64 ~~(11) "MUNICIPALITY" means any regional commission, county, metropolitan district, water~~
65 ~~conservancy district, metropolitan sewage disposal district, service authority, city and county, city,~~
66 ~~town, Indian tribe or authorized Indian tribal organization, or any two or more of the above which~~
67 ~~are acting jointly in connection with a sewage treatment facility.~~

68
69 ~~(12) "PERSON" means an individual, corporation, partnership, association, state, or political~~
70 ~~subdivision thereof, federal agency, state agency, municipality, or commission.~~

71
72 ~~(13) "PRODUCER" means a person operating a water treatment facility which generates water~~
73 ~~treatment sludge. The producer is that person who files a Beneficial Use Plan and in whose name~~
74 ~~any subsequent Beneficial Use Certification is issued. The producer is thereby responsible for~~
75 ~~assuring conformance of a proposed beneficial use of water treatment sludge with the criteria~~
76 ~~contained in this regulation.~~

77
78 ~~(14) "ROOT CROPS AND LOW GROWING FRUITS AND VEGETABLES" means those crops, the~~
79 ~~edible portion of which grow below, at, or within one foot of the soil surface.~~

80
81 ~~(15) "USER" means a person who owns or operates application site.~~

82
83 ~~(16) "WATER TREATMENT PLANT SLUDGE" or "WATER TREATMENT SLUDGE" means the~~
84 ~~accumulated solids resulting from the processing of raw water in a treatment plant of a~~
85 ~~municipality.~~

86 87 ~~C. Severability~~

88
89 ~~Each provision of these regulations is severable and intended to be independently valid. Any~~
90 ~~determination that any provision of these regulations is invalid shall not operate to invalidate the~~
91 ~~remainder of the regulations.~~

92 93 ~~D. Variance~~

94
95 ~~The Department may grant a variance from any provision of these regulations in a particular case, where~~
96 ~~it determines that the public health benefits which will be created by compliance with the subject provision~~
97 ~~do not bear a reasonable relationship to the costs required to achieve compliance, and that the granting~~
98 ~~of a variance will be reasonably consistent with the protection of the public health.~~

99
100 ~~Any person who requests a variance from a provision of these regulations shall have the burden of~~
101 ~~supplying the Department with that information which demonstrates that conditions exist which warrant~~
102 ~~the granting of a variance. A request for a variance may be filed simultaneously with the Letter of Intent,~~

~~or at any other time provided good cause is shown for not having requested the variance at the time the Letter of Intent was submitted. The Department shall grant or deny a variance request within 90 days of receipt thereof. No person shall be considered to have obtained a variance until he has received a written statement from the Department granting the variance. In any such written statement, the Department shall identify the provision of these regulations from which a variance has been granted, and shall prescribe any other requirements which the person receiving the variance must meet, in lieu of the provision from which a variance has been granted. The Department shall prescribe such requirements as are reasonably consistent with the protection of the public health.~~

~~All variances granted by the Department in any one month shall be reported to the Board of Health at its next regular meeting.~~

~~E. Enforcement~~

~~The Department shall enforce these regulations pursuant to C.R.S. 1973, Section 25-1-114 and 30-20-443, 444 as amended.~~

~~F. References~~

~~The attached statement of basis and purpose is incorporated by reference. With respect to material incorporated herein by reference these regulations do not include future amendments to or editions of such material. Copies of such material may be acquired by contacting the Director, Water Quality Control Division, Colorado Department of Health, 4240 East 14th Avenue, Denver, Colorado 80220.~~

~~G. Effective date~~

~~These regulations shall take effect on February 19, 1993.~~

~~2. ADMINISTRATION OF BENEFICIAL USE CERTIFICATIONS~~

~~A. Submission of Beneficial Use Plans Prior to Application of Water Treatment Sludge~~

~~No producer shall collect water treatment sludge, distribute water treatment sludge or supply water treatment sludge in any manner to any other person for use at an application site unless:~~

- ~~(1) The producer has submitted a complete Beneficial Use Plan by certified mail or by personal service to the Department, and a copy of the letter to the local health department authority, regarding that application;~~
- ~~(2) the producer has obtained permission from the user to enter on the site to perform any monitoring and analysis identified in the Beneficial Use Plan;~~
- ~~(3) the producer has made available a copy of these regulations to the user;~~
- ~~(4) the Department has issued a Beneficial Use Certification.~~

~~B. Content of Beneficial Use Plan~~

~~The Beneficial Use Plan shall contain a legal description of the land to which water treatment sludge is to be applied; the number of pounds of water treatment sludge to be applied per acre; the types of crops to be grown on the land, and the number of acres of each crop; analysis of the water treatment sludge for the parameters identified in Table 1; documentation that the comments of the local health authority have been solicited; the name and address of the producer, the name and address of any contractor, and a copy of the contract, if applicable, the name and address of the user, a detailed monitoring plan and identifying measures which remediate any detrimental impact of the application, and other information~~

158 ~~deemed by the Department as appropriate to evaluate potential human health and environmental impact~~
159 ~~of the proposed use.~~

160
161 ~~C. Department Review~~

162
163 ~~Following adoption of these regulations a producer shall be advised by the Department not more than~~
164 ~~thirty days after receipt of a Beneficial Use Plan by the Department if, and in what respects, the Beneficial~~
165 ~~Use Plan is incomplete.~~

166
167 ~~D. Beneficial Use Certification~~

168
169 ~~The Department shall either issue or deny the Beneficial Use Certification not more than thirty days after~~
170 ~~the Department has deemed the Beneficial Use Plan to be complete.~~

171
172 ~~**3. BENEFICIAL USE OF WATER TREATMENT SLUDGE**~~

173
174 ~~A. Beneficial use of co-applied water treatment sludge and biosolids shall comply with all applicable~~
175 ~~requirements of the Colorado Biosolids Regulations, 4.9.0. Co-applied domestic sewage sludge and~~
176 ~~water treatment plant sludge shall be either mixed prior to application or shall be incorporated~~
177 ~~following application.~~

178
179 ~~B. No person shall apply water treatment plant sludge to land used to grow root crops and low growing~~
180 ~~fruits and vegetables if such crops are intended for direct human consumption.~~

181
182 ~~C. No person shall undertake the beneficial use of water treatment plant sludges which exceed 40~~
183 ~~picocuries total alpha activity per gram of dry sludge.~~

184
185 ~~**4. WATER TREATMENT SLUDGE STORAGE**~~

186
187 ~~A. Beneficial Use Certification Required. No person shall store water treatment sludge at an application~~
188 ~~site unless a Beneficial Use Certification has been issued by the Department for such storage.~~

189
190 ~~B. Exemptions~~

191
192 ~~The requirements of this section shall not apply to the following:~~

193
194 ~~(1) Process components of a water treatment facility and water treatment sludge storage~~
195 ~~components located at a water treatment facility.~~

196
197 ~~(2) Components of a solid waste disposal site or facility which has received a Certificate of~~
198 ~~Designation pursuant to the Solid Wastes Disposal Sites and Facilities Act, C.R.S. 30-20-100.5 §~~
199 ~~—, 1973 (as amended).~~

200
201 ~~(3) Facilities which are intended for the offloading of water treatment sludges from vehicles~~
202 ~~transporting water treatment sludges to an application site and subsequent loading of water~~
203 ~~treatment sludges into application equipment, notwithstanding any incidental spillage or~~
204 ~~placement on the land during transfer. Such facilities shall be bermed or otherwise protected or~~
205 ~~managed so as to prevent movement of spillage or runoff from the transfer area off of the~~
206 ~~permitted site.~~

207
208 ~~C. Storage Requirements for Water Treatment Sludge~~

209
210 ~~Facilities for the storage of water treatment sludges located at an application site shall be bermed or~~
211 ~~otherwise protected so as to prevent movement of spillage or runoff from the storage facilities off of the~~

212 ~~permitted site. Water treatment sludge shall be stored in a manner which will prevent windblown sludge~~
 213 ~~from escaping the storage facility.~~

214
 215 **~~5. MONITORING AND REPORTING~~**

216
 217 **~~A. Water Treatment Sludge Monitoring~~**

218
 219 ~~Analysis of water treatment plant sludges shall be performed on composite samples for the~~
 220 ~~parameters set forth in Table 1. Analyses of water treatment plant sludges shall be performed either~~
 221 ~~annually, or if disposal occurs on a less frequent basis, prior to disposal.~~

222
 223 **~~B. Additional Monitoring~~**

224
 225 ~~If the Department has reasonable grounds to believe that a particular water treatment sludge may~~
 226 ~~contain any elements or compounds which could cause a hazard to the public health or to the~~
 227 ~~environment, the Department may require groundwater, soils or plant tissue monitoring and/or the~~
 228 ~~analysis of water treatment sludge for parameters other than those set forth in Table 1, or may~~
 229 ~~require that analyses be performed at a greater frequency than is otherwise required by this section.~~

230
 231 **~~TABLE 1 ANALYSES AND REPORTING UNITS¹~~**
 232

Parameter	Units	Parameter	Units
Total Solids	Percent	Total Chromium	mg/kg
pH	Standard Units	Total Copper	mg/kg
Organic N	Percent	Total Iron	mg/kg
Total Ammonia-N	Percent	Total Lead	mg/kg
Nitrate-N	Percent	Total Mercury	mg/kg
Total Phosphorus	Percent	Total Molybdenum	mg/kg
Total Potassium	Percent	Total Nickel	mg/kg
Total Aluminum	mg/kg²	Total Selenium	mg/kg
Total Arsenic	mg/kg	Total Zinc	mg/kg
Total Cadmium	mg/kg	Total Alpha Activity	pCi/g³
1- All results expressed in dry weight basis for a composited sample. 2- Milligrams per kilogram. 3- Picocuries per gram.			

233
 234
 235

236 ~~C. Reporting~~

237
238 ~~Annually, on or before February 19, each producer shall report to the Department the results of all~~
239 ~~analyses the producer has performed during the preceding year to meet the requirements of this~~
240 ~~section, the total amount of water treatment sludge applied during the preceding year and the location~~
241 ~~at which any water treatment sludge was applied during the preceding year.~~

242
243 **6. FEES**

244
245 ~~A. Establishment of Fees~~

246
247 ~~Purcuant to Section 30-20-110.5, C.R.S. (1986 supp.), the State Board of Health shall establish, and~~
248 ~~may revise as necessary, a schedule of non-refundable fees to cover the reasonable costs of~~
249 ~~implementing a program for the beneficial use of sludge. For purposes of this section the term~~
250 ~~"sludge" is defined to mean water treatment sludge which use is subject to the provisions of this~~
251 ~~regulation and water treatment sludge and/or biosolids which use is subject to the provisions of the~~
252 ~~Colorado Biosolids Regulations.~~

253
254 ~~The fee schedule shall be based on program cost projections prepared by the Department and~~
255 ~~submitted in writing to the Board for review. The Board will conduct a public hearing on any proposed~~
256 ~~change to the fee structure.~~

257
258 ~~The reasonable costs of implementing and maintaining the program include, but may not be limited~~
259 ~~to, the following:~~

260
261 ~~— Personal Services — the cost of personnel assigned to implement and maintain the program,~~
262 ~~i.e., salaries, benefits, etc.~~

263
264 ~~— Operating — the costs associated with travel, laboratory analysis, and capital outlay.~~

265
266 ~~— Program Evaluation — the costs associated with assessment of potential beneficial sludge use~~
267 ~~technology.~~

268
269 ~~B. Assessment of Fees and Billing~~

270
271 ~~(1) A non-refundable fee of one dollar and twenty-four cents per dry ton of sludge shall be assessed~~
272 ~~the producers whose sludge is used for beneficial purposes as defined in Section 1.B of these~~
273 ~~regulations.~~

274
275 ~~The Department will notify producers when adjustments are made to the fee schedule and the~~
276 ~~effective date for implementing the changes.~~

277
278 ~~(2) Producers shall receive a notice from the Department of the annual fee schedule. This notice~~
279 ~~shall accompany the Department's Beneficial Use Certification or Notice of Authorization for the~~
280 ~~Use and Distribution of Biosolids.~~

281
282 ~~(3) Payment may be prepaid based on the annual projected sludge tonnage or paid based on the~~
283 ~~actual amount of dry sludge applied.~~

284
285 ~~a) Prepayment of the annual projected payment must be made within the first quarter (January-~~
286 ~~March) of the calendar year. Prepayment must be made for an entire year.~~

287
288 ~~Adjustment will be made to the following year's annual projected payment to reflect any~~
289 ~~overpayment or underpayment of the actual amount due. Adjustments will be based on the~~

290 ~~actual amount of sludge applied as reported in the annual reports multiplied by the fee in~~
291 ~~place during the period the sludge is to be applied, or~~

292
293 ~~b) Payments based on the actual amount of sludge (dryweight basis) applied in the previous~~
294 ~~reporting period covered in the annual report must be remitted on or before May 19.~~

295
296 ~~(4) Payment by check shall be made out to the Colorado Department of Health, Sludge Management~~
297 ~~Program. All such payments received shall be credited to the Sludge Management Program as~~
298 ~~provided for in C.R.S. 30-20-110.5 (3).~~

299
300 ~~C. Enforcement of Fee Payments~~

301
302 ~~(1) Failure or refusal to make payment for application of domestic sewage sludge to land for~~
303 ~~beneficial purposes within the time frame specified in Section 6.B of these regulations shall result~~
304 ~~in suspension and/or revocation of the Beneficial Use Certification or Notice of Authorization for~~
305 ~~the Use and Distribution of Biosolids.~~

306
307 ~~(2) Action to suspend or revoke the Beneficial Use Certification or Notice of Authorization for the Use~~
308 ~~and Distribution of Biosolids shall be taken by the Department if payment is not received following~~
309 ~~written notice sent by certified mail pursuant to Section 6.C.3. In the event of suspension or~~
310 ~~revocation of the Beneficial Use Certification or Notice of Authorization for the Use and~~
311 ~~Distribution of Biosolids, subsequent sludge application shall be subject to all applicable~~
312 ~~requirements of the State Solid Wastes Disposal Sites and Facilities Act until such time as~~
313 ~~payment is received and the Beneficial Use Certification or Notice of Authorization for the Use~~
314 ~~and Distribution of Biosolids is reinstated.~~

315
316 ~~(3) Formal notification of the suspension or revocation shall be sent to the producer by certified mail.~~
317 ~~The notice shall state:~~

318
319 ~~a) the effective date of the suspension or revocation;~~

320
321 ~~b) the basis for suspension or revocation;~~

322
323 ~~c) the consequences of applying sludge without the required Beneficial Use Certification or~~
324 ~~Notice of Authorization for the Use and Distribution of Biosolids.~~

325
326 ~~D. Appeals of Actions on Fees~~

327
328 ~~(1) All appeal reviews will be conducted by the Board in accordance with Section 24-4-105 of the~~
329 ~~State Administrative Procedures Act.~~

330
331 ~~(2) Board action on the appeal is considered final agency action.~~

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

2
3 **Solid and Hazardous Waste Commission**

4 **Hazardous Materials and Waste Management Division**

5 **5 CCR 1003-7**

6
7
8 **STATEMENT OF BASIS AND PURPOSE**
9 **AND SPECIFIC STATUTORY AUTHORITY FOR**
10

11 **Repeal of 5 CCR 1003-7 (Beneficial Use of Water Treatment Sludge and Fees Applicable to**
12 **the Beneficial Uses of Sludges)**

13
14 **Basis and Purpose**

15 This amendment to repeal 5 CCR 1003-7 is made pursuant to the authority granted to the Solid
16 and Hazardous Waste Commission in § 30-20-109, C.R.S. and § 30-20-109(4)(a), C.R.S.

17 These regulations were originally adopted by the Board of Health prior to the creation of the
18 Solid and Hazardous Waste Commission. The original authority to adopt the rule was under the
19 Solid Waste Disposal Sites and Facilities Act. Since the passage of these regulations, the Water
20 Quality Control Commission has adopted rules related to beneficial uses of biosolids pursuant to
21 § 25-8-205(1)(e), C.R.S. and accompanying regulations at 5 CCR 1002-64 (Biosolids
22 Regulation). With the adoption of Regulation No. 64, the regulations at 5 CCR 1003-7 have
23 become superfluous and are no longer being enforced by the Division. Accordingly, the
24 Division is requesting that the 5 CCR 1003-7 regulations be repealed.
25
26

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