

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-1184.01 Thomas Morris

HOUSE BILL 08-1414

HOUSE SPONSORSHIP

Buescher,

SENATE SPONSORSHIP

Penry,

House Committees

Health and Human Services

Senate Committees

A BILL FOR AN ACT

101 CONCERNING AN INCREASE IN THE REGULATION OF THE DISPOSAL OF
102 EXPLORATION AND PRODUCTION WASTES FROM OIL AND GAS
103 OPERATIONS AT COMMERCIAL SOLID WASTE FACILITIES
104 PURSUANT TO RULES PROMULGATED BY THE SOLID AND
105 HAZARDOUS WASTE COMMISSION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires the solid and hazardous waste commission to promulgate rules for the disposal of exploration and production wastes from oil and gas operations at commercial solid waste facilities, including:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! Mandatory set-backs from occupied structures and designated outside activity areas of at least one-half mile;
- ! Mandatory liners to prevent the migration of wastes to ground water;
- ! Waste analysis and reporting requirements to ensure that only exploration and production wastes are disposed of at such facilities;
- ! Restrictions on access to the facilities to protect the public and wildlife;
- ! Contingency plans to respond to emergencies; and
- ! Financial assurance requirements for closure and reclamation costs.

Requires existing facilities that accept exploration and production wastes to submit an application to amend the facilities' certificate of designation within 3 months after the rules become effective and to comply with the rules, other than the set-back requirements, within 24 months after the rules become effective. Allows a local government to issue or amend a certificate of designation despite a contrary recommendation by the department of public health and environment if that recommendation is based solely upon the public health or environmental impacts of the facility other than those identified pursuant to the department's technical review.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that the disposal of exploration and production waste
5 from oil and gas operations raises public health and safety concerns;

6 (b) Determines that, pursuant to current law, those concerns are
7 addressed differently based upon whether the disposal of such waste
8 occurs on the site of oil and gas operations, in which case the Colorado
9 oil and gas conservation commission has jurisdiction, or offsite, in which
10 case the department of public health and environment has jurisdiction and
11 has been requiring air and water quality monitoring; and

12 (c) Declares that this act is necessary to give the department of
13 public health and environment additional authority to adequately protect

1 public health and safety in connection with the disposal of exploration
2 and production waste at commercial solid wastes disposal sites.

3 **SECTION 2.** 30-20-109, Colorado Revised Statutes, is amended
4 BY THE ADDITION OF A NEW SUBSECTION to read:

5 **30-20-109. Commission to promulgate rules - definitions.**

6 (1.5) (a) AS USED IN THIS SUBSECTION (1.5):

7 (I) "EP WASTE" MEANS EXPLORATION AND PRODUCTION WASTE, AS
8 THAT TERM IS DEFINED IN SECTION 34-60-103, C.R.S.

9 (II) "EP WASTE DISPOSAL FACILITY" MEANS A COMMERCIAL SOLID
10 WASTES DISPOSAL SITE AND FACILITY THAT ACCEPTS THE DEPOSIT OF EP
11 WASTE.

12 (b) THE SOLID AND HAZARDOUS WASTE COMMISSION SHALL
13 PROMULGATE RULES THAT ARE SPECIFICALLY APPLICABLE TO THE DEPOSIT
14 OF EP WASTE AT AN EP WASTE DISPOSAL FACILITY. THE RULES SHALL BE
15 AT LEAST AS PROTECTIVE AS THOSE PROMULGATED BY THE COLORADO OIL
16 AND GAS CONSERVATION COMMISSION PURSUANT TO ARTICLE 60 OF TITLE
17 34, C.R.S., AND SHALL INCLUDE THE FOLLOWING:

18 (I) MANDATORY SET-BACKS OF EP WASTE DISPOSAL FACILITIES OF
19 AT LEAST ONE-HALF MILE FROM ALL RESIDENCES, EDUCATIONAL
20 FACILITIES, DAY CARE CENTERS, HOSPITALS, NURSING HOMES, JAILS,
21 HOTELS, MOTELS, OTHER OCCUPIED STRUCTURES, OR OUTSIDE ACTIVITY
22 AREAS SUCH AS PARKS AND PLAYING FIELDS AS DESIGNATED IN THE RULES;

23 (II) MANDATORY FABRICATED LINERS AND MONITORING
24 REQUIREMENTS AS NECESSARY TO PREVENT THE MIGRATION OF EP WASTE
25 TO GROUND WATER;

26 (III) WASTE ANALYSIS AND REPORTING REQUIREMENTS TO ENSURE
27 THAT ONLY EP WASTE IS DISPOSED OF AT AN EP WASTE DISPOSAL

1 FACILITY;

2 (IV) FENCING AND NETTING REQUIREMENTS TO PREVENT THE
3 PUBLIC AND WILDLIFE FROM ACCESSING EP WASTE DISPOSAL FACILITIES;

4 (V) CONTINGENCY PLANS TO RESPOND TO EMERGENCIES,
5 INCLUDING ADEQUATE FREEBOARD, OVERFLOW PONDS, OR BOTH; AND

6 (VI) FINANCIAL ASSURANCE REQUIREMENTS THAT ARE ADEQUATE
7 TO COVER CLOSURE AND RECLAMATION COSTS.

8 (c) AN EP WASTE DISPOSAL FACILITY THAT ACCEPTED EP WASTE
9 ON OR BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (1.5) AND THAT
10 HAS NOT BEGUN CLOSURE BY THE EFFECTIVE DATE OF THIS SUBSECTION
11 (1.5) SHALL:

12 (I) FILE AN APPLICATION PURSUANT TO SECTION 30-20-103 WITHIN
13 THREE MONTHS AFTER THE RULES PROMULGATED PURSUANT TO THIS
14 SUBSECTION (1.5) BECOME EFFECTIVE WITH THE GOVERNING BODY HAVING
15 JURISDICTION TO AMEND THE FACILITY'S CERTIFICATE OF DESIGNATION TO
16 INCORPORATE THE REQUIREMENTS SPECIFIED IN THE RULES; AND

17 (II) COMPLY WITH THE RULES PROMULGATED PURSUANT TO THIS
18 SUBSECTION (1.5) WITHIN TWENTY-FOUR MONTHS AFTER THEY BECOME
19 EFFECTIVE; EXCEPT THAT NOTHING IN THIS SUBSECTION (1.5) SHALL BE
20 DEEMED TO:

21 (A) REQUIRE AN EP WASTE DISPOSAL FACILITY THAT LAWFULLY
22 ACCEPTED EP WASTE ON OR BEFORE THE EFFECTIVE DATE OF THIS
23 SUBSECTION (1.5) TO COMPLY WITH THE SET-BACK REQUIREMENTS OF THIS
24 SUBSECTION (1.5); OR

25 (B) PLACE AN EP WASTE DISPOSAL FACILITY INTO
26 NONCOMPLIANCE BECAUSE OF AN ALLEGED VIOLATION OF A SET-BACK
27 REQUIREMENT OF THIS SUBSECTION (1.5) DUE SOLELY TO THE FACT THAT

1 A RESIDENTIAL OR OTHER OCCUPIED STRUCTURE OR A DESIGNATED
2 OUTSIDE ACTIVITY AREA IS ESTABLISHED WITHIN THE SET-BACK DISTANCE
3 ON OR AFTER ISSUANCE OF THE CERTIFICATE OF DESIGNATION PURSUANT
4 TO THIS SUBSECTION (1.5).

5 **SECTION 3.** 30-20-103.5, Colorado Revised Statutes, is
6 amended to read:

7 **30-20-103.5. Existing solid wastes disposal sites and facilities**
8 **- application procedures.** EXCEPT AS SPECIFIED IN SECTION 30-20-109
9 (1.5), no existing solid wastes disposal site and facility ~~which~~ THAT is
10 operating pursuant to a valid certificate of designation shall be deemed to
11 be in violation of any provision of this part 1 because of any failure to
12 comply with application procedures ~~which~~ THAT are enacted ~~subsequent~~
13 ~~to~~ AFTER the issuance of such certificate of designation.

14 **SECTION 4.** 30-20-105 (1), Colorado Revised Statutes, is
15 amended to read:

16 **30-20-105. Certificate - state financial assurance**
17 **requirements.** (1) If the governing body having jurisdiction deems that
18 a certificate of designation should be granted to the applicant, it shall
19 issue the certificate, and such certificate shall be displayed in a prominent
20 place at the site and facility. Such governing body shall not issue a
21 certificate of designation if the department has recommended disapproval
22 pursuant to section 30-20-103; EXCEPT THAT SUCH GOVERNING BODY MAY
23 ISSUE OR AMEND A CERTIFICATE FOR AN EP WASTE DISPOSAL FACILITY
24 THAT IS SUBJECT TO THE RULES PROMULGATED PURSUANT TO SECTION
25 30-20-109 (1.5) NOTWITHSTANDING THE DEPARTMENT'S
26 RECOMMENDATION IF THAT RECOMMENDATION IS BASED SOLELY UPON
27 THE PUBLIC HEALTH OR ENVIRONMENTAL IMPACTS OF THE FACILITY OTHER

1 THAN THOSE IDENTIFIED IN THE DEPARTMENT'S TECHNICAL REVIEW OF
2 ENVIRONMENTAL AND PUBLIC HEALTH ISSUES PURSUANT TO SECTION
3 30-20-110.

4 **SECTION 5. Applicability.** This act shall apply to acts
5 occurring on or after the effective date of this act.

6 **SECTION 6. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.