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## Memorandum

June 26, 2019

**TO:** Interim Committee Zero Waste and Recycling Interim Study Committee

**FROM:** Clare Pramuk, Principal Fiscal Analyst, 303-866-2677

**SUBJECT:** Colorado Waste Management, Recycling, and Composting State Programs

### Summary

This memorandum summarizes the state programs related to waste management, recycling, and composting, and identifies recent legislation related to those issues.

### Solid Waste Management

The Colorado Department of Public Health and Environment (CDPHE) is authorized by the U.S. Environmental Protection Agency (EPA) to ensure compliance with laws and regulations pertaining to the management of solid waste, which includes recycling and composting. The Solid Waste Management Program is funded by fees and regulates:

- landfills;
- composting facilities;
- incinerators;
- recycling facilities;
- medical waste facilities;
- transfer stations;
- solid waste impoundment facilities;
- commercial exploration and production waste facilities;
- waste tire facilities; and
- waste grease facilities.

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## Solid Waste Diversion

In 2018, the CDPHE began classifying disposal data and diversion rates based on the point of generation rather than the total quantity of waste accepted at landfills. As a result, the CDPHE now calculates a municipal solid waste (MSW) diversion rate and a total diversion rate. MSW includes the percentage of solid waste, recyclables, and compostable materials from residential and commercial sources. For 2018, Colorado's MSW diversion rate was 17.2 percent, which equates to 1.2 million tons of recycling and composting with compost accounting for 366,525 tons. This diversion rate is lower than the EPA's 34 percent national average MSW diversion rate for 2015.

The total diversion rate for Colorado includes MSW, as well as waste and materials generated by the industrial sector, including construction and demolition, manufacturing waste, and energy production waste. For 2018, Colorado's total diversion rate was 35.4 percent which equates to 5.6 million pounds of industrial and MSW. For additional information on the diversion rate and composition of diverted waste, see: <https://www.colorado.gov/pacific/cdphe/2018-colorado-recycling-totals>.

Recent enacted legislation addressing solid waste management includes Senate Bill 19-192 and House Bill 15-1144 described below. Additionally, the Colorado State Capitol building received a LEED Gold Certification.

**Senate Bill 19-192** created the Front Range Waste Diversion Enterprise in the CDPHE to promote waste diversion in the counties of Adams, Arapahoe, Boulder, Douglas, Elbert, El Paso, Jefferson, Larimer, Pueblo, Teller, and Weld, and the cities and counties of Broomfield and Denver. The enterprise is funded by solid waste user fees and governed by a 13-member board of directors.

**House Bill 15-1144** prohibited the production, sale, manufacturing, or promotion of personal care products or over-the-counter drugs that contain synthetic plastic microbeads. The bill phases in the prohibition between January 1, 2018 and January 1, 2020. Microbeads were subsequently banned at the federal level.

**Capitol State Capitol Leadership in Energy and Environmental Design (LEED) Gold Certification.** As part of the certification process, the Capitol conducted a waste audit on June 14, 2018, of all building trash and recyclables for that day. Based on the audit, the current diversion rate is 36.21 percent (58.2 pounds diverted out of 160.75 pounds of total material). For more information on recycling at the Capitol, see: <https://www.colorado.gov/pacific/dca/news/go-green-state-capitol-leed-gold-certified>.

## Recycling

As part of solid waste management, the CDPHE administers a number of programs related to recycling as described below.

**NextCycle.** Colorado NextCycle is a program that provides grant funding, expertise, and economic data to Colorado businesses, communities, universities, and startups to develop end markets. The program is funded by the CDPHE, receives input and guidance from a technical advisory committee, and is facilitated by Resource Recycling Systems, a sustainability and recycling consulting firm. More information on NextCycle can be found at: <https://www.colorado.gov/pacific/cdphe/nextcycle>.

**Recyclers.** The CDPHE maintains a directory of recyclers in the state, including recyclers for electronics and paint, and mail-back programs for mercury, lighting, dental, medical, and electronics waste. For more information on recyclers, see: <https://www.colorado.gov/pacific/cdphe/recycling>.

**Architectural Paint Stewardship Program.** The program was created by Senate Bill 14-029 and PaintCare was chosen by the CDPHE to collect and manage unwanted paint for the program for the recycling, reuse, and disposal of post-consumer architectural paint. It is funded through a fee added to the purchase price of paint. Fees are \$.35 per pint or quart, \$.75 per gallon, and \$1.60 for five-gallon containers. The aggregate amount of fees charged to consumers cannot exceed the actual cost of maintaining the program. In 2017, the most recent year for which data are available, PaintCare collected \$6.9 million in fees, expended \$5.4 million, and has net assets of \$3.8 million. The program is overseen by the Hazardous Materials and Waste Management Division of CDPHE. Additional information can be found at: <https://www.paintcare.org/paintcare-states/colorado/#/everyone>.

**Recycling Resources Economic Opportunity (RREO) Program.** The RREO program, created by House Bill 07-1288, provides funding to promote economic development through the management of materials that would otherwise be disposed in landfills. Funds are available to support recycling, composting, anaerobic digestion, source reduction, and beneficial use or reuse. Since it began in 2007, the program has awarded nearly \$25 million in grants and rebates. The program is overseen by the Pollution Prevention Advisory Board. For additional information about grants and rebates see: <https://www.colorado.gov/pacific/cdphe/recycling-grants-and-rebates>.

**Waste tires.** The Colorado General Assembly began addressing policies on waste tires with House Bill 93-1318. House Bill 14-1352 repealed and reenacted the state's waste tire laws to move the program's administration from the Department of Revenue (DOR) to the CDPHE and its Solid and Hazardous Waste Commission. In 2017, 7.9 million waste tires were generated in Colorado and imported from surrounding states. While approximately 148,000 tires were recycled out-of-state, these tires and others from storage inventories were recycled in Colorado at a rate of 121 percent. Tires are primarily recycled into tire derived fuel, alternative daily cover, salvaged tires, and fences and windbreaks. A 55-cent fee on new tires covers the administrative costs of the waste tire program, including fee collection, inspections, enforcement, and reporting. For further information on waste tire administration see: <https://www.colorado.gov/pacific/cdphe/wastetires>.

Beginning January 1, 2020, Senate Bill 19-198 increases the fee on new tires sold in Colorado to \$2.00 to fund rebates to end users for the processing of waste tires into tire-derived products or fuel and makes changes to the operation of monofills which are disposal facilities that accept only waste tires. The fee returns to 55-cent per tire on January 1, 2024, and will be collected until December 31, 2025.

## Composting

The Colorado Department of Agriculture (CDA) Division of Inspection and Consumer Services (ICS) regulates compost that is distributed in Colorado, and the CDPHE regulates compost manufacturing facilities and commercial composters. Compost is sampled by ICS inspectors and tested by CDA's biochemistry laboratory to verify listed ingredients. For additional information on CDA's program, see: <https://www.colorado.gov/pacific/aginspection/compost>.

## Water Reuse

Three bills passed by the General Assembly in 2018 codified Water Quality Control Commission rules related to the allowable uses of reclaimed domestic wastewater. House Bill 18-1069 expanded allowable uses to include toilet and urinal flushing in multifamily residential structures and in nonresidential structures. House Bill 18-1093 included the irrigation of food crops if the reclaimed water meets the water quality standards for commercial crops under the federal Food and Drug Administration Food Safety Modernization Act. And Senate Bill 18-038 included industrial hemp cultivation as an allowable use. A fourth bill, House Bill 18-153, would have expanded allowable uses to include marijuana cultivation, but the bill was postponed indefinitely by the Senate Finance Committee.

## Marijuana and Marijuana-Related Waste Disposal

Medical and recreational marijuana industry, industrial hemp, and home-grown marijuana waste material includes solid, liquid, and hazardous waste. Some waste may be composted or used to manufacture industrial fiber products, while other waste that includes solvents, chemicals, or fertilizers is subject to hazardous waste regulations. Marijuana waste must be made unusable and unrecognizable before it is disposed of in a landfill, deposited at a compost facility, or composted onsite. Fibrous waste, which includes roots, stalks and stems, may be transferred to an industrial fiber products producer without being made unusable and unrecognizable.

**Senate Bill 19-224** addressed issues relating to the collection, disposal, recycling and reuse of marijuana consumer waste. Under the bill, marijuana consumer waste is defined as any component left after the consumption of a regulated marijuana product, including but not limited to containers, packages, cartridges, pods, cups, batteries, all-in-one disposable devices, and any other waste component left after the regulated marijuana is consumed as defined by rules promulgated by the Marijuana Enforcement Division in the DOR. The CDPHE and DOR will conduct rulemaking regarding marijuana consumer waste.

## Proposed Legislation in Colorado

The General Assembly considered a number of bills over the past five legislative sessions related to solid waste management, recycling, and composting that did not become law.

**House Bill 15-1206** would have created a refund for sales and use taxes paid on machinery and equipment used for recycling or reprocessing of waste products.

**House Bill 15-1386** would have created a sales and use tax exemption for recycling and composting equipment purchased between January 1, 2015, and December 31, 2017.

**House Bill 17-1275** would have required the CDPHE and the Office of Economic Development and International Trade to assist in increasing solid waste diversion in the state, and require landfills and local governments to begin collecting solid waste data.

**Senate Bill 17-047** would have modified the waste tire management system, increased the waste tire fee ranges, and modified the grant and loan program.

**House Bill 18-1054** would have referred a measure to voters to levy a 25 cent tax on certain transactions where plastic bags were provided. Revenue from the measure would have helped fund low-income housing.

**House Bill 18-1133** would have created a registration for a fibrous waste recycling facility in the medical and retail marijuana codes.

**Senate Bill 18-045** would have repealed the Architectural Paint Stewardship Act.

**Senate Bill 18-142** would have authorized a state district court to approve one municipal incorporation pilot project creating a sustainable community that is designated as a town.

**House Bill 19-1143** would have prohibited a retail food establishment from providing a single-use plastic beverage straw to a customer unless requested by the customer beginning January 1, 2020. Take-out orders, prepackaged meals, and self-serve straw dispensers were excluded from the bill. The bill also prohibited a local government from regulating the use of single-use plastic beverage straws.

**Senate Bill 19-034** would have addressed local government authority to prohibit the use of certain plastic materials by authorizing local governments to set standards for retail food establishments' ready-to-eat food containers that may be discarded through recycling or composting.

**Senate Bill 19-243** would have prohibited a retail food establishment from distributing an expanded polystyrene (EPS) product for use as a container for off-premises, ready-to-eat food on or after January 1, 2024. If a retail food establishment would have had a supply of EPS products on that date, it would have been permitted to exhaust its supply.