

## CHAPTER 421

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**HEALTH AND ENVIRONMENT**

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**HOUSE BILL 08-1414**

BY REPRESENTATIVE(S) Buescher, Curry, Fischer, King, Labuda, Liston, Looper, Madden, Massey, McFadyen, Merrifield, Romanoff, Rose, and Borodkin;  
also SENATOR(S) Penry, Boyd, Gibbs, Groff, Hagedorn, Romer, Schwartz, Shaffer, Tochtrop, and Wiens.

**AN ACT**

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

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

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

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

(b) Declares that this act is necessary to give the department of public health and environment additional authority to adequately protect public health and safety in connection with the disposal of exploration and production waste at commercial solid wastes disposal sites.

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

**30-20-109. Commission to promulgate rules - definitions.** (1.5) (a) AS USED IN THIS SUBSECTION (1.5):

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

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

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(b) THE SOLID AND HAZARDOUS WASTE COMMISSION SHALL PROMULGATE RULES THAT ARE SPECIFICALLY APPLICABLE TO THE DEPOSIT OF EP WASTE AT AN EP WASTE DISPOSAL FACILITY. THE RULES SHALL INCLUDE THE FOLLOWING:

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

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

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

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

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

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

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

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

(II) COMPLY WITH THE RULES PROMULGATED PURSUANT TO THIS SUBSECTION (1.5) WITHIN TWENTY-FOUR MONTHS AFTER THEY BECOME EFFECTIVE, UNLESS THE EP WASTE DISPOSAL FACILITY DEMONSTRATES TO THE DEPARTMENT NO LATER THAN EIGHTEEN MONTHS AFTER THE RULES BECOME EFFECTIVE WHY IT CANNOT TIMELY COMPLY WITH THE RULES AND THE DEPARTMENT AGREES TO A COMPLIANCE SCHEDULE. IN SUCH CASE, THE DEPARTMENT MAY EXTEND THE COMPLIANCE DEADLINE TO NO MORE THAN THIRTY-SIX MONTHS AFTER THE RULES BECOME EFFECTIVE; EXCEPT THAT NOTHING IN THIS SUBSECTION (1.5) SHALL BE DEEMED TO:

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

(B) PLACE AN EP WASTE DISPOSAL FACILITY INTO NONCOMPLIANCE BECAUSE OF AN ALLEGED VIOLATION OF A SET-BACK REQUIREMENT OF THIS SUBSECTION (1.5) DUE SOLELY TO THE FACT THAT A RESIDENTIAL OR OTHER OCCUPIED STRUCTURE OR

A DESIGNATED OUTSIDE ACTIVITY AREA IS ESTABLISHED WITHIN THE SET-BACK DISTANCE ON OR AFTER ISSUANCE OF THE CERTIFICATE OF DESIGNATION PURSUANT TO THIS SUBSECTION (1.5).

(d) THE DEPARTMENT SHALL:

(I) COORDINATE WITH THE COLORADO OIL AND GAS CONSERVATION COMMISSION CREATED IN SECTION 34-60-104, C.R.S., GOVERNING BODIES HAVING JURISDICTION, AND THE FEDERAL BUREAU OF LAND MANAGEMENT TO IDENTIFY POTENTIAL EP WASTE DISPOSAL SITES THAT ARE LOCATED REASONABLY CLOSE TO OIL AND GAS OPERATION AREAS ON EITHER FEDERAL OR NONFEDERAL LAND AND THAT MEET THE SET-BACK REQUIREMENTS OF THIS SUBSECTION (1.5); AND

(II) TO THE EXTENT PRACTICABLE, ENCOURAGE GOVERNING BODIES HAVING JURISDICTION AND THE FEDERAL BUREAU OF LAND MANAGEMENT TO APPROVE THE SITING OF EP WASTE DISPOSAL SITES AT LOCATIONS IDENTIFIED PURSUANT TO THIS PARAGRAPH (d) WHEN SO REQUESTED BY A COMMERCIAL OPERATOR.

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

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

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

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 4, 2008