



# COLORADO

Solid & Hazardous  
Waste Commission

Department of Public Health & Environment

## NOTICE OF PROPOSED RULEMAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

### SUBJECT:

For consideration of the revocation of conditional delisting #003 found in 6 CCR 1007-3, Part 261, Appendix IX, along with the accompanying Statement of Basis and Purpose, the following will be considered:

### **Revocation of Conditional Delisting #003 found in 6 CCR 1007-3, Part 261, Appendix IX - Regulations Pertaining to Hazardous Waste - Concerning the Denver Arapahoe Chemical Waste Processing Facility (DACWPF)**

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 25-15-302(2), C.R.S.

Appendix IX of Part 261 (Wastes Excluded Under §§ 260.20 and 260.22) is being amended to remove Delisting #003 (“delisting”), the conditional delisting granted to the Denver Arapahoe Chemical Waste Processing Facility (“DACWPF”), operated by Waste Management of Colorado, Inc. (“WMC”). The Hazardous Materials and Waste Management Division (“Division”) and WMC have submitted a joint petition (“Joint Revocation Petition”) to revoke the delisting, which granted WMC a conditional delisting of the F039 multisource leachate that collects in the primary and secondary leachate collection sumps at DACWPF, a closed hazardous waste landfill.

The commission is considering the proposed revocation of the delisting on the basis of the Joint Revocation Petition, which the Division and WMC agreed to submit in order to settle *Waste Management of Colorado, Inc. v. Colorado Department of Public Health and Environment, et al.*, Case No. 22CV30115 in the District Court, Arapahoe County, State of Colorado. The Joint Revocation Petition is not based on any alleged deficiencies in the delisting or on any allegations of non-compliance with the Delisting Regulation, and the commission does not need to consider any such allegations to address the proposed revocation.

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 rulemaking was submitted to the Secretary of State on July 11, 2022. 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 rulemaking in the Colorado Register on July 25, 2022.

The proposed rulemaking materials may also be accessed at <https://cdphe.colorado.gov/shwc-rulemaking-hearings>.

#### WRITTEN TESTIMONY

Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to [cdphe.hwcrequests@state.co.us](mailto:cdphe.hwcrequests@state.co.us) by Wednesday, August 4, 2022, at 11:59 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.**

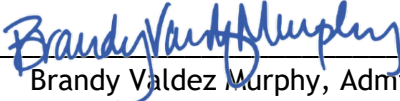
#### HEARING SCHEDULE:

DATE: Tuesday, August 16, 2022  
TIME: 9:00 a.m.  
PLACE: Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Building A, Sabin Conference Room  
Denver, CO 80246  
(Due to ongoing COVID-19 health and safety restrictions, only commissioners and staff are able to meet in person. All other attendance is welcomed virtually via Zoom.)  
-OR-  
Due to COVID-19, the meeting will be held online only at:

<https://us02web.zoom.us/meeting/register/tZAtfuqprjgvHNTv33-MS-GHfQd6-mdFdjC9>

Please check for the official location of the meeting on the commission's website:  
<https://cdphe.colorado.gov/shwc-meeting-information>

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

  
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Brandy Valdez Murphy, Administrator



## Petition Cover Sheet

### Petition to Revoke Conditional Delisting #003 from Appendix IX of Part 261

**Persons Requesting Rulemaking:** Colleen Brisnehan  
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Waste Management of Colorado, Inc.  
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The attached petition requests revocation of Delisting #003 (“Delisting”), the conditional delisting granted to the Denver Arapahoe Chemical Waste Processing Facility (“DACWPF”), operated by Waste Management of Colorado, Inc. (“WMC”), from Appendix IX of Part 261 (Wastes Excluded Under §§ 260.20 and 260.22) of 6 CCR 1007-3. In accordance with a settlement agreement that resolved the following case: *Waste Management of Colorado, Inc. v. Colorado Department of Public Health and Environment, et al.*, Case No. 22CV30115 in the District Court, Arapahoe County, State of Colorado (“Leachate Litigation”), Waste Management of Colorado, Inc. (“WMC”) and the Hazardous Materials and Waste Management Division (“Division”) are jointly petitioning for revocation of the delisting. The policy, factual, and legal issues that may arise due to the petition concern requirements in 6 CCR 1007-3, Parts 260 and 261. Staff from WMC and the Division, as well as attorneys from the Colorado Attorney General’s Office and Vranesh and Raisch, LLP were included in the drafting and development of the proposed rulemaking and this petition. The Commission has authority to consider this petition under 6 CCR 1007-3, section 260.20 and section 25-15-302(2), C.R.S.

#### **Statement Regarding Federal Requirements:**

The revocation action requested is not specifically required by provisions of the federal Resource Conservation and Recovery Act, nor is it more stringent than the requirements of the Resource Conservation and Recovery Act.

#### **Statement of Range of Regulatory Alternatives:**

This Petition requests revocation of the Delisting on the basis that WMC and the Division have agreed to jointly petition the Solid and Hazardous Waste Commission (“Commission”) to revoke

the Delisting for the sole purpose of settling the Leachate Litigation. The Commission could grant the petition, deny the petition, or take no action on the petition.

## **Petition to Revoke Conditional Delisting for the Denver Arapahoe Chemical Waste Processing Facility (DACWPF)**

The Hazardous Materials and Waste Management Division (“Division”) of the Colorado Department of Public Health and Environment and Waste Management of Colorado, Inc. (“WMC”) are jointly filing this petition to revoke Delisting #003, the conditional delisting regulation granted to the Denver Arapahoe Chemical Waste Processing Facility (“DACWPF”), from Appendix IX of Part 261 (Wastes Excluded Under §§ 260.20 and 260.22) of 6 CCR 1007-3 (“Delisting”). The Solid and Hazardous Waste Commission is authorized to consider this revocation petition under 6 CCR 1007-3, section 260.20(a).

As grounds for this petition, WMC and the Division state the following:

1. WMC maintains the above-referenced Denver Arapahoe Chemical Waste Processing Facility (“DACWPF”), a closed hazardous waste disposal cell with an engineered double liner and leachate collection system.
2. On October 30, 1998, the Colorado Hazardous Waste Commission (now known as the Colorado Solid and Hazardous Waste Commission, and herein “Commission”) adopted the above-described Delisting, which granted WMC a conditional delisting of the F039 multisource leachate that collects in the primary and secondary leachate collection sumps at DACWPF.
3. On December 22, 2021, the Division issued a letter asserting, among other things, that the DACWPF leachate must be managed as hazardous waste despite the Delisting.
4. WMC challenged the Division’s December 22, 2021 determination letter in *Waste Management of Colorado, Inc. v. Colorado Department of Public Health and Environment, et al.*, Case No. 22CV30115 in the District Court, Arapahoe County, State of Colorado (“Leachate Litigation”).
5. WMC and the Division resolved the Leachate Litigation through a settlement agreement. As part of that settlement agreement, WMC and the Division agreed to jointly petition the Commission to revoke the Delisting for the sole purpose of settling the Leachate Litigation.
6. This request for revocation is not based on any alleged deficiencies in the Delisting or on any allegations of non-compliance with the Delisting.
7. WMC and the Division are requesting that the effective date of the revocation shall be no earlier than the date the Commission revokes the Delisting.

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

5  
6 6 CCR 1007-3  
7

8 HAZARDOUS WASTE  
9

10 Proposed Revocation of Conditional Delisting #003 from Appendix IX of Part 261

11  
12 1) Appendix IX of Part 261 is amended by removing Delisting #003:  
13

14 PART 261, APPENDIX IX – WASTES EXCLUDED UNDER §§ 260.20 AND 260.22

15 \*\*\*\*\*  
16

17  
18 ~~DELISTING #:~~ 003

19  
20 ~~FACILITY:~~ Denver Arapahoe Chemical Waste Processing Facility (“DACWPF”)  
21

22 ~~EPA ID No.:~~ COD000695007  
23

24 ~~ADDRESS:~~ 27500 E. Yale Avenue, Aurora, Colorado 80044  
25

26 ~~WASTE:~~ Leachate which collects in the primary and secondary leachate collection sumps  
27 of the DACWPF reconstructed cell (EPA hazardous waste # F039), removed  
28 after October 30, 1998  
29

30 ~~CONDITIONS:~~ This delisting is valid only for the waste stream specified above and referenced in the  
31 delisting petition submitted June 16, 1998, under the following conditions:  
32

33 ~~1. The collected leachate must be used only for dust suppression at Subtitle D solid waste disposal~~  
34 ~~facilities;~~  
35

36 ~~2. Use of the collected leachate for dust suppression shall be limited to areas within the footprint of~~  
37 ~~any Subtitle D solid waste disposal facility liner system and shall not be applied to the final cover~~  
38 ~~of any Subtitle D solid waste disposal facility;~~  
39

40 ~~3. The leachate must be sampled annually and analyzed for toxicity characteristic leaching~~  
41 ~~procedure (“TCLP”) metals, volatiles, semi-volatiles, and pesticides to ensure that it will satisfy~~  
42 ~~the conditions presented in the petition and does not exceed applicable risk levels; and~~  
43

44 ~~4. Appropriate precautions should be taken to avoid dermal contact or ingestion of the leachate~~  
45 ~~such as, where appropriate, use of repellent boots, coveralls, gloves, and safety glasses.~~

46 \*\*\*\*\*

47 **2) Section 8.100 {Statement of Basis and Purpose for the Rulemaking Hearing of August**  
48 **16, 2022} is added to Part 8 of the Regulations to read as follows:**

49 **Statement of Basis and Purpose**  
50 **Rulemaking Hearing of August 16, 2022**

51 **8.100 Basis and Purpose.**

52 This amendment to 6 CCR 1007-3, Part 261 is made pursuant to the authority granted to the Solid and  
53 Hazardous Waste Commission (“Commission”) in § 25-15-302(2), C.R.S.

54 **Amendment of Appendix IX of Part 261– Wastes Excluded Under §§ 260.20 and 260.22**

55 Appendix IX of Part 261 (Wastes Excluded Under §§ 260.20 and 260.22) is being amended to remove  
56 Delisting #003 (“Delisting”), the conditional delisting granted to the Denver Arapahoe Chemical Waste  
57 Processing Facility (“DACWPF”), operated by Waste Management of Colorado, Inc. (“WMC”). The  
58 Hazardous Materials and Waste Management Division (“Division”) and WMC submitted a joint petition  
59 (“Joint Revocation Petition”) to revoke the Delisting, which granted WMC a conditional delisting of the  
60 F039 multisource leachate that collects in the primary and secondary leachate collection sumps at  
61 DACWPF, a closed hazardous waste landfill.

62  
63 The Commission is revoking the Delisting on the basis of the Joint Revocation Petition, which the Division  
64 and WMC agreed to submit in order to settle *Waste Management of Colorado, Inc. v. Colorado*  
65 *Department of Public Health and Environment, et al.*, Case No. 22CV30115 in the District Court,  
66 Arapahoe County, State of Colorado. The Joint Revocation Petition is not based on any alleged  
67 deficiencies in the Delisting or on any allegations of non-compliance with the Delisting Regulation, nor is  
68 the Commission’s decision to revoke the Delisting Regulation based on any such allegations.