



CACI COLORADO ASSOCIATION
OF COMMERCE & INDUSTRY

TO: Joe Schieffelin, Manager, Solid Waste and Material Management Program
Colorado Department of Public Health & Environment (CDPHE)

CC: Martha Rudolph, Director, Environmental Programs
Gary Baughman, Director, Hazardous Materials & Waste Management Division

FROM: Colorado Association of Commerce & Industry - Energy & Environment Council

DATE: June 23, 2017

RE: Comments on CDPHE TENORM Notice Letter Concerning E&P Waste Disposal

The Colorado Association of Commerce & Industry (CACI) is the state's Chamber of Commerce and represents hundreds of businesses of all sizes across the state, as well as numerous trade associations, economic development organizations, and local chambers of commerce in Colorado. CACI's Energy & Environment Council is one of CACI's six policy councils and is represented by members who bring an expertise in energy and environmental issues. On behalf of the Council, we would appreciate your consideration of the following comments regarding the Department's letter dated May 12, 2017, entitled *Notice to Landfills—Potential TENORM Characteristics of Exploration and Production Wastes and the Department's Plan for Upgrading Landfill Permitting Documents to Account for this Issue* (hereinafter "TENORM Notice Letter").

Through the TENORM Notice Letter, the Department has provided notice that solid waste landfills may not accept oil and gas exploration and production waste ("E&P Waste") containing TENORM above certain administrative release levels without additional state and local approval. Towards that end, the Department plans to change existing Engineering Design and Operation Plans of Department-regulated solid waste landfills to require testing and other acceptance criteria for E&P waste. This change will result in significant costs and delays for solid waste landfills without clear authority for these standards.

According to the TENORM Notice Letter, the Department is applying aspects of its Final Draft Interim Policy and Guidance Pending Rulemaking for the Control and Disposition of Technologically Enhanced Naturally Occurring Radioactive Materials in Colorado (2007) ("Interim TENORM Guidance") to the disposal of certain E&P Waste. The Department's Interim TENORM Guidance was issued on the express assumption that regulatory standards would eventually be promulgated. Until rulemaking could be finalized, the Interim Draft TENORM Guidance was intended to be formally expanded to address other industry sectors through separate stakeholder processes. However, in lieu of a rulemaking or expansion of the guidance, the Department has issued the TENORM Notice Letter to address landfill disposal of E&P Waste.

Agency standards should be developed through a formal rulemaking process in accordance with the Colorado Administrative Procedures Act. By acting outside of a formal rulemaking process, a lack of transparency exists for the regulated community regarding testing standards and other requirements imposed by the Department. Thus, there will be no way of knowing what technical and other assumptions

underlie the Department's new requirements, or whether those requirements are being imposed uniformly across the entire industry. At a minimum, a stakeholder process should be initiated to review and provide input on the Department's proposed new requirements for the disposal of E&P Waste in support of expansion of the Department's Interim TENORM Guidance and a future rulemaking.

To address the above concerns, CACI respectfully requests that the Department delay the deadlines set forth in the subject TENORM Notice Letter and allow the current and future requirements contemplated by that letter to be reviewed as part of a formal stakeholder process that will support formal expansion of the Interim TENORM Guidance to address the disposal of E&P Wastes and a future rulemaking.

We thank you for your consideration, and if you should have any questions/concerns regarding this matter, please contact Bill Skewes on behalf of CACI at bill@skewesga.com or 303-765-4766.

Thank you!