



2023 Legislative Issue Form

To propose a CCI legislative issue, please complete this form.

Feel free to use more than one page and include any supplemental materials.

1.) **Contact Information** (of person bringing forth issue):

- a. **Name:** Matt Salka
- b. **Title:** Chair, La Plata County Commissioners
- c. **County:** La Plata
- d. **Phone Number:** (970) 382-6215
- e. **E-Mail Address:** matt.salka@co.laplata.co.us

2.) **Issue/Problem to be addressed** (What is the problem this legislation is seeking to solve?)

There are 187 closed landfills in the State of Colorado. Many of these landfills ceased receiving waste decades ago and were closed in compliance with the closure provisions of the Colorado law applicable to solid waste landfills in effect at the time of their closure.

Most of these landfills were opened and collected solid waste before laws and regulations required landfills be environmentally engineered. EPA regulations recognized the need to shut down non-environmentally engineered landfills and incentivized the closure of such landfills by exempting landfills that received waste after 1991, but stopped receiving waste before April 9, 1994, from complying with certain RCRA regulations. Many of the current closed landfills were deliberately closed to meet the April 9, 1994, deadline.

Rather than recognizing the unique challenge non-environmentally engineered closed landfills can pose to state and county interests, CDPHE is using its police powers under the Solid Waste Act to impose on county owned landfills requirements that were not part of the law when the landfills were closed.

3.) **Background on this Issue/Problem** (How did this come to be? Why are you seeking a legislative remedy?)

In 1994, La Plata County closed a landfill that had been receiving solid waste since the 1950's. La Plata County monitored groundwater at the site. In 2004, vinyl chloride above state standards were detected. La Plata County contracted with expert consultants and began mitigation. Since the first detection of vinyl chloride in the groundwater, La Plata County has engaged in multiple mitigation efforts, including the installation of sixteen (16) air sparge wells, twenty-four (24) passive gas extraction wells, four (4) plume definition wells, eight (8) groundwater monitoring wells, two (2) soil gas/leachate points, seven (7) soil gas point wells, five (5) leachate point wells, and four (4) perimeter soil gas monitoring probes. This is a total of 66 installations on a parcel approximately 15 acres in size.

In addition to monitoring wells at the landfill site, La Plata has also monitored nearby wells on adjacent properties. Based in whole or in part to La Plata's aggressive mitigation efforts, no vinyl chloride has ever been detected in any nearby residential water wells.

La Plata County has spent in excess of five hundred thousand dollars (\$500,000) in mitigation efforts to reduce vinyl chloride in groundwater that no one is drinking and many thousands more dollars litigating CDPHE's unilateral consent order.

La Plata County is not alone. In recent years, a handful of CCI counties have engaged in contentious disagreements with CDPHE regarding closed county-owned landfills. CDPHE consistently uses one sided enforcement orders that threaten counties with exorbitant costs and potential penalties of \$10,000 per day per violation, if the county does not comply with the orders. . In some instances, the orders contain a "blank check" provision where a county is required to take the actions unilaterally determined by CDPHE to be



necessary, regardless of cost. CDPHE's enforcement actions against public entities is a relatively recent tactic. Prior to 2008, CDPHE did not enter any enforcement orders against a public entity. Since 2008, CDPHE has issued multiple compliance orders to public and private entities concerning closed landfills.

La Plata County understands that protection of the natural environment is important to the welfare of the citizens of Colorado and we (along with other counties) are profoundly invested in ensuring our own air and water are clean. La Plata's goal with the legislation is not to escape a duty, but rather to propose a solution that takes into consideration a multitude of criteria and then establishes a statewide funding mechanism to address the collective duty of counties and the state to the environment. The state, La Plata and all counties have a shared goal of addressing environmental issues. The challenge is how to pay for it, particularly when it involves legacy issues.

CDPHE has taken the stance that “. . .the State's public interest to preserve and protect water quality for beneficial uses and the protection of public health and the environment outweighs any potential fiscal interest of local government.” (CDPHE Opening Brief, Case No. 2018CA1551, p. 14.). CDPHE's statement is demonstrative of the myopic view enjoyed only by those who are focused on a singular issue. Furthermore, this stance allows CDPHE to ignore any county crafted solutions to environmental impacts of a closed landfill, disregard the role of the Boards of County Commissioners to establish fiscal priorities of a county, disregard the restraints imposed by TABOR and a county's ability to generate revenue, and places the quality of water (even water no one is drinking) above other necessities of county government, such as public safety, emergency management, law enforcement, human services, etc.

4.) Proposed Solution/Legislative Remedy to this issue.

La Plata County proposes legislation that would specifically address old, closed landfills.

5.) Have you explored a non-legislative solution to this problem?

Yes, for several years now La Plata, Arapahoe, CCI and other counties have extended diplomacy to CDPHE in search of a solution, including jointly sponsored legislation. Furthermore, La Plata County and other counties have engaged in lengthy and costly legal battles with CDPHE. La Plata County continues to litigate the legality of a compliance order CDPHE issued related to one of its closed landfills regarding groundwater. (The compliance order was issued even though La Plata County is actively and successfully mitigating the presence of vinyl chloride in water no one is drinking). Notwithstanding the litigation, we are presently seeking a negotiated solution.

6.) Statutory Citation to be modified AND proposed/revised language (The Colorado Revised Statute is available for free at [this link](#), by selecting “Colorado Revised Statutes”).

La Plata County would propose a new Part 15 to Title 30, Article 20 that would address old landfills. A fundamental condition of the newly proposed Part 15 is the creation of a state insurance pool to fund and fix, like the state pool used to remediate leaking groundwater storage tanks. The creation of state funding is a recognition of the statewide nature of the problem, and the limited funding local governments have to deal with the problem. This legislation would also recognize the long-held public policy of grandfathering properly closed landfills from new requirements. Additionally, it would recognize the historical role of both counties and the State.

A conceptual outline of a new Part 15 is as follows:

Part 15 - Landfills Closed Before 1995. Part 15 would apply to both private and publicly owned closed landfills. The effective date of the federal regulations was 1994. Specifically, landfills that received waste after 1991 but stopped receiving waste before April 9, 1994, are exempt from all requirements of Part 258, except for the final



cover requirement. 40 C.R.R. §258.1(d)(1)). The purpose of Part 15 would be to address landfills closed before the Subtitle D regulations went into effect. In addition, the purpose would be to address landfills closed before March 17, 1993, when emergency regulations were promulgated. (There were no valid regulations applicable to landfills from 1967 to March 17, 1993).

30-20-1501: Legislative Declaration and Applicability. State that this Part applies to old, closed landfills. Summarize the problem and the need for additional tools and mechanisms to address the challenge. State that Part 1 does not apply.

30-20-1502: Definitions: Add counties in the definition of person for this part only; define closed landfills.

30-20-1503: Authorization to create regulations.

30-20-1504: State Funding. Create insurance pool.

30-20-1505: Criteria for using money. Remediation takes priority over investigation. Cost-benefit analysis to be performed. Define and establish risk criteria. Recognition of realistic timeline of decades to remediate.

30-20-1506: Applicability of regulations. Clarify status of various regulations. Address historical flaw in regulations. Clarify that no new requirements since 1994 closure will apply to old landfills. Address the issue of emerging contaminants. If the State wants to clean up to new water quality groundwater protection standards for emerging contaminants, such as 1,4-dioxane, this needs to be clarified. Landfills that opened before 1971 did not have and still do not have engineering design standards. Landfills that closed before 1989 did not have any groundwater quality standards applicable to them at closure.

30-20-1507: Existing Plans. Clarify status of existing closure plans, MMPs and other plans and what remains binding.

30-20-1508: Emerging Issues/Nuisance Conditions. Address a collaborative process for assessing and responding to emerging issues and potential nuisance conditions, including the discovery of contamination leaking from the landfill. Process should include the key factors which should be taken into account in assessing criticality of issue and level of appropriate response. Process also should include a dispute resolution mechanism to resolve disagreements between CDPHE and a county.

30-20-1509: Enforcement provisions. No penalties or fines shall be used for legacy issues that were not understood or required by either the State or counties in the past. Determine if and when orders are allowed. If yes, no “blank check” provisions. Address statute of limitation and continuing violations.

30-20-1510: Fees: Address CDPHE review fees. Counties believe they should not be charged and the State, like counties, needs to find a way to pay for its program and oversight role. Determine who pays for work of the consultant or third-party vendor, if any.

7.) Relationship of this issue to County Commissioner’s roles and/or authorities.

County Commissioners are responsible for the fiscal management of the county resources. They also respond to health, safety, and welfare issues within unincorporated portions of their respective counties. Finally, many counties own closed landfills and have responsibility as a landowner.

8.) Has this proposal been approved by the Board of County Commissioners?

Yes, this proposal has unanimous support among La Plata County Commissioners.



9.) **List any potential Proponents/Opponents & their perspective; indicate any groups/individuals with whom you have already discussed this issue.**

There was an attempt in 2019 and 2020 to negotiate with CDPHE to jointly propose legislation that would address closed landfills. In 2020, CDPHE proposed legislation that was not consistent with the attempted negotiated legislation and was not supported by CCI. The 2020 CDPHE legislative proposal was not successful, in part because of CCI's opposition to that legislation.

The main opponent of this legislation may be CDPHE. Some environmental groups may also oppose legislation that would exempt closed landfills from current regulations. However, if the counties could negotiate with CDPHE for a joint proposed resolution for closed landfills, it would likely not be opposed by as many environmental groups.

Other counties have or are litigating issues related to compliance orders issued by CDPHE concerning closed landfills or have been issued compliance orders and would likely support this type of legislation.

10.) **Have you visited with your legislator(s) about this proposal? What was their reaction? Are members of your delegation likely to sponsor, support, or oppose this proposal?**

This potential legislation has been discussed with Attorney General Weiser and Representative McLachlan. At this point, La Plata County has not requested any legislator sponsor this proposed legislation.

11.) **Anticipated Fiscal Impact (to counties, state, other stakeholders, etc.).**

The fiscal impact would be largely addressed within the legislation and the creation of the insurance pool. Also, by exempting properly closed landfills as defined within the statute from certain regulatory criteria, it would allow counties to mitigate damages instead of face uncertain demands by CDPHE and penalties for non-compliance with compliance orders.

12.) **Please list the local subject matter experts CCI staff can follow-up with for more information on this proposal.**

La Plata County Commissioner Matt Salka and Sheryl Rogers, La Plata County Attorney.

13.) **If your county is submitting multiple issue forms, please rank each issue.**

This would be the number one priority issue for La Plata County.