



# Solid and Hazardous Waste Commission Annual Report 2007-2008

Colorado Department of Public Health and Environment  
Solid and Hazardous Waste Commission  
OED-OLRA-A5  
4300 Cherry Creek Drive South  
Denver, CO 80246

# Solid and Hazardous Waste Commission

## *Annual Report May 2007 – April 2008*

### **Commission and Its Members**

In 1992, the Hazardous Waste Commission was established through 25-15-302, C.R.S. In 2006, as a result of Senate Bill 06-171, the Hazardous Waste Commission was renamed the Solid and Hazardous Waste Commission and assumed rulemaking responsibilities from the State Board of Health over solid waste. The commission, a Type I agency located within the Colorado Department of Public Health and Environment but with authority independent of the executive director, is charged with promulgating and adopting rules pertaining to solid and hazardous waste; setting fees and issuing interpretive rules for hazardous waste; and hearing appeals of administrative law judges' determinations regarding the amounts of administrative penalties for hazardous waste matters. The Solid and Hazardous Waste Commission is comprised of nine gubernatorial appointees: three members from industry; three members from the public at large; and three members from government or academia. The executive director has no statutory role in the commission.

The federal government authorizes Colorado to implement a state hazardous waste program in lieu of a federal program as long as the state program meets certain criteria. One of the major tasks of the commission is to ensure that the state hazardous waste rules are consistent with the U.S. Environmental Protection Agency's requirements so that Colorado will not lose its authorization and federal funds. The commission has the authority to adopt rules that are more stringent than the federal requirements and to list or define as a hazardous waste a waste not regulated by the federal rules, if the commission makes a written finding after public hearing and substantial evidence in the record that it is necessary to protect public health and environment. Six votes are needed and the commission also must issue an opinion referring to and evaluating public health and environmental information and studies that form the basis of the rules. The rules regarding mining and mineral processing wastes, including exploration, mining, milling and smelting and refining waste, must be identical to the federal hazardous waste rules.

### ***The Commissioners Selected from Industry***

- **Melanie Granberg**: Ms. Granberg earned her Juris Doctor degree from the University of Denver, College of Law and was admitted to the Colorado Bar in 1999. She has a Bachelor's degree from the University of Colorado. Ms. Granberg has been with the firm of Gablehouse Calkins & Granberg, LLC since 1997 and in her time there she has worked on a variety of cases advising clients in matters concerning such topics as CERCLA and RCRA; asbestos, mold and methamphetamine cleanups; land use challenges and applications; buying and selling contaminated property; and other environmental matters.

Ms. Granberg has served as President of the Colorado Hazardous Waste Management Society and is presently still a member of CHWMS. She currently sits on the Board of Directors for the Colorado Association of Mold and Meth Professionals. Ms. Granberg is also a member of

the Jefferson County Local Emergency Planning Committee and has considerable experience working with local and state agencies on emergency planning programs. She has also worked closely with the Colorado Emergency Planning Commission on a variety of state-wide emergency planning issues and is the 2003 recipient of their Len Boulas award for outstanding contribution in the field of hazardous materials education, planning and response. Ms. Granberg has lectured in Lucknow, India concerning emergency planning for chemical accidents. She has also served on advisory committees to the Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division concerning the development of regulations pertaining to methamphetamine lab remediation and asbestos in soils. She was also a member of the Colorado Board of Health's School Toxics Advisory Committee. This Committee was formed to evaluate the scope and nature of safety issues associated with chemical storage, use and disposal in schools. From 2001-2002, Ms. Granberg served on the Colorado Land and Water Fund of the Rockies' Forest Protection Team.

- **Lynn Kornfeld:** Lynn Kornfeld is an attorney with Faegre & Benson LLP, specializing in environmental and land use law. She has represented national and multi-national manufacturing and energy companies in resolutions of a broad range of issues arising under the Resource Conservation and Recovery Act; Clean Water Act; Clean Air Act; Comprehensive Environmental Response, Compensation, and Liability Act; and their state counterparts. She also provides counsel to a broad range of commercial and industrial clients related to the purchase and sale of contaminated property, including the various issues related to the cleanup of brownfield sites under the Colorado Voluntary Cleanup and Redevelopment Act. Prior to joining Faegre & Benson LLP, Ms. Kornfeld worked for the Denver and Washington D.C. offices of Patton Boggs, LLP, where she practiced law in the Administrative and Environmental Policy groups. Before practicing law, Ms. Kornfeld worked as an environmental consultant for a large construction engineering firm where she provided a broad range of litigation support and technical environmental services for clients, focusing on Comprehensive Environmental Response, Compensation, and Liability Act recovery and construction claims analyses. She holds a juris doctor degree from the University of Colorado School of Law and a bachelor's degree in environmental biology and environmental studies from the University of Colorado. She is a native of Boulder, Colorado.
- **Thomas Schweitzer:** Thomas Schweitzer received a Bachelor of Science degree in civil engineering from the South Dakota School of Mines and Technology in 1980. He is a Registered Professional Engineer in Colorado and North Dakota.

He is currently the engineering manager with Waste Management of Colorado, Inc. with 20 years of experience in permitting, design, construction management and regulatory compliance of the company's solid waste management facilities, and managing post-closure care and compliance activities for a closed hazardous waste disposal site. Mr. Schweitzer's experience also includes providing engineering/compliance support to Waste Management owned/operated solid waste disposal facilities in California, New Mexico, North Dakota and Utah.

Mr. Schweitzer is on the Board of Directors of the Colorado Chapter of the Solid Waste Association of North America.

## ***The Commissioners Selected from the Public at-Large***

- **Scott Myers:** Scott Myers is a Registered Professional Geologist (PG) with more than 23 years of experience managing consulting, construction, industrial, and retail compliance. As a former Environmental, Health, and Safety Manager/Director for such notable companies as Ashland Petroleum/Marathon/Valvoline, BASF, and Raytheon, Mr. Myers is familiar with implementing “Triple Bottom Line” Sustainability Development strategies at corporate and line levels. He is proficient with respect to environmental requirements in more than 20 states as well as Europe, Canada, Mexico, Chile, Australia, New Zealand, and Antarctica. His work experience has given him an expert level understanding with respect to RCRA, CERCLA, NEPA, SPCC, OPA, Clean Air Act, Clean Water Act, and OSHA.

In addition to his years in the petrochemical, manufacturing, and surface mining industries, Mr. Myers has extensive experience working for federal and state regulatory agencies. He worked as a surface mine inspector and as a RCRA/CERCLA inspector/permit writer for the State of Kentucky. Most recently, Mr. Myers acted as the Environmental, Health, and Safety Director for the prime contractor of the U.S. Antarctic Program.

Mr. Myer’s remediation experience includes oversight of soil and groundwater cleanup at six RCRA permitted facilities, 300+ sites contaminated by petroleum and solvents, and several multi-million dollar fuel spill responses and remediations.

- **Ann C. Umphres:** Ann Umphres is a 1982 cum laude graduate of Southwest Missouri State University with a B. S. in Public Administration and Economics. She graduated from George Washington University, National Law Center with a juris doctor degree in 1985. Ms. Umphres was an associate with Cockrell, Quinn & Creighton from 1985-87, an assistant regional counsel with the U.S. Environmental Protection Agency, Region VIII, from 1987-1994 and is currently President of the Law Firm of Ann C. Umphres, P.C. specializing in environmental and natural resources law matters.
- **William J. Kelso:** William Kelso received a B.S. in Mechanical Engineering from the University of Pennsylvania in 1969 and a Masters in Civil-Environmental Engineering from Northeastern University in 1972. He is currently an environmental engineer/project manager at Parsons Corporation. He has specialized in treatment, storage, transportation and disposal of hazardous and acutely hazardous wastes in Colorado for the past 30 years. Mr. Kelso has been responsible for engineering systems for decontamination and disposal of military wastes and commercial/industrial hazardous waste at facilities in Colorado and throughout the United States. He has prepared pollution prevention plans, best management practice plans for hazardous materials/wastes, waste minimization plans, spill prevention plans, and hazardous materials emergency response plans for numerous industrial and military facilities.

## ***The Commissioners Selected from Academia and Local Government***

- **Christopher J. Neumann:** Christopher J. Neumann is an attorney with the law firm Greenberg Traurig, LLP where he counsels clients in the petroleum, natural gas, mining, airline and retail industries on a wide variety of litigation, environmental, natural resources,

administrative and insurance coverage matters. Chris also assists clients in efforts to obtain land use approvals and financial incentives for brownfield sites development projects and in efforts to resolve environmental concerns in complex business transactions. Prior to joining Greenberg Traurig, Chris served as a law clerk for the Environmental Enforcement Section of the U.S. Department of Justice and for Waste Management, Inc. Before attending law school, Chris studied and conducted research in the fields of groundwater hydrology, bioremediation and earthquake seismology at the University of Notre Dame and at Argonne National Laboratory near Chicago, Illinois. Chris received an undergraduate degree in civil engineering from the University of Notre Dame (B.S., engineering and environmental science) and a law degree (J.D.) and certificate in environmental and natural resources law from the Northwestern School of Law of Lewis and Clark College. Since 2005, Chris has served as an adjunct professor in the environmental and natural resources program at the University of Colorado School of Law, where he teaches a course in hazardous waste law. Chris is an instrument-rated private pilot and is a member of the Aircraft Owners and Pilots Association and the American Society of Civil Engineers.

- **Christina Aguilera:** Christina Aguilera is currently manager of Environmental Compliance and Industrial Hygiene at the University of Colorado Denver (UCD). Ms. Aguilera has degrees in Electronics Engineering (AAS), Environmental Studies (BA), and Public Health (MPH). Prior to UCD, she was director of Environmental Services at Jeffco School District and Director of Environmental Health and Safety at the University of Northern Colorado. Apart from a broad-based environmental compliance background, these work experiences afford Ms. Aguilera a perspective of both small and large quantity hazardous waste generators in non-traditional generator settings. Other work history includes environmental consulting for county government and private industry – primarily in subsurface investigations and remediation – and technical support for the Department of Energy and the Environmental Protection Agency contractors, including environmental assessment field work for acid deposition in the eastern states. She is the mother of two teenage boys, Stefen and Alexander Hillman, and wife of Daniel Hillman.
- **William Patterson:** Bill was born and raised in Ohio and has lived in Montrose since 1988. Bill has extensive business, engineering and public service experience. He is Director of Engineering at TEI Rock Drills. Commissioner Patterson served on the City of Montrose Council from 1996 to 2002 and served as Mayor in 1999 and 2000. Commissioner Patterson holds a graduate degree in Mechanical Engineering, and graduated Summa Cum Laude as a Bachelor of Mechanical Engineering from Ohio State University. He has authored 16 publications and over 30 technical reports. Bill is a pilot and other interests include family and motorcycles. Bill and his wife, Judy, who met at the pony barn at the County Fair, have been married for 48 years and have 6 children. They owned a hay farm in Ohio and sold Case I.H. farm equipment.

## Rulemaking Hearings and Public Outreach

### May 15, 2007

On May 15, the commission held its business and annual meeting. During the annual meeting, the commission learned

more about some new and innovative approaches to environmental issues in Colorado. Presentations were given on greening government, environmental management system permitting, the department's environmental agriculture program and House Bill 07-1288 concerning the sustainable management of discarded resources.

The commission adopted amendments to reduce the paperwork burden imposed on the department and the regulated community by the existing RCRA recordkeeping and reporting requirements in the Colorado Hazardous Waste Regulations (6 CCCR 1007-3). These amendments will help to streamline the information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected, while retaining the department's mission of protecting human health and the environment. The amendments adopted include the following: a) changes the amount of time records must be kept; b) provides the option to follow the Integrated Contingency Plan Guidance; c) eliminates obsolete regulatory language in §§ 264.193, 264.251, 265.193, 265.221 and 265.301 that is no longer applicable; d) eliminates selected recordkeeping and reporting requirements; e) permits decreased inspection frequency for certain hazardous waste management units; f) removes the requirement in § 261.4(a)(10)(iii)(E) to submit a one-time notification for recycled wood wastewaters and spent wood-preserving solutions; and g) changes the requirements for document submittal.

The commission adopted amendments to 6 CCR 1007-2, Part 3 to revise the inspection frequency for the department's inspection of off-site hazardous waste disposal sites. As specified in Section 25-15-209.5, C.R.S., such inspection shall be conducted at intervals determined by rule and regulation of the Commission based on the volume and toxicity of the wastes being received. The state's only hazardous waste disposal facility is the Clean Harbors Deer Trail LLC facility (formerly Highway 36 Land Development Company.) The existing regulations required the department to conduct inspections of off-site hazardous waste facilities a minimum of once per month and potentially four times a month based on volume of waste received. Experience demonstrated that inspection frequency based on volume of waste received did not provide an effective or efficient benefit to human health or the environment. The volume of waste received at the facility had increased at times over the years. However, the types and toxicity of the waste received at the facility had not changed. In fact, some of the wastes received at the facility were high volume-low toxicity wastes that required very routine and simple waste handling. The current regulations did not allow the division to account for these high volume-low toxicity wastes in conducting inspections. These amendments require the department to inspect the facility once a month regardless of volume or toxicity of the wastes received at the facility, but allows flexibility for additional inspections. The department is committed and will continue to inspect the facility more frequently if the type of wastes received, the type of waste management activities, compliance history, or findings of previous inspections warrant a greater frequency.

The amendment of § 6.04 was made to revise paragraph (a) to reflect the annual fees being assessed for fiscal year 2007-2008. The fees, which fund the operation of the commission, were not adjusted.

## **June 19, 2007**

The commission members took a tour of two solid waste facilities on June 19. The Denver Arapahoe Disposal Site (DADS), was the first stop on the tour. Steve Derus and Doc Nyiro, Waste Management of

Colorado, Inc., conducted the tour and provided the commissioners with information concerning the landfill's design, operating procedures and expected 100 year "life". Next, the commissioners toured the Waste Management of Colorado Recycling facility located on Franklin Street. Jose Herrera, Rich Conner, Neal Schuessler and Ken Morford conducted the tour and explained the facility operations and the types of materials processed for recycling.

### August 21, 2007

On August 21, 2007, the commission adopted amendments to Part 273 mercury-containing devices. These amendments were minor conforming changes necessary to maintain state equivalency to and provide consistency with the federal requirements. The amendments adopted include the following:

- a. Revising the applicability standards for mercury-containing devices at § 273.2 of the regulations;
- b. Adding a definition of "ampule", and revising the definition of "Large Quantity Handler of Universal Waste" in § 273.9 of the regulations;
- c. Revising the waste management standards for small quantity handlers of universal waste mercury-containing devices in § 273.13(c) of the regulations;
- d. Revising the labeling/marketing requirements for universal waste mercury-containing thermostats at § 273.14 of the regulations for small quantity handlers of universal waste;
- e. Modifying the notification requirements of large quantity handlers of universal waste at § 273.32 of the regulations;
- f. Revising the waste management standards for large quantity handlers of universal waste mercury-containing devices in § 273.33(c) of the regulations; and
- g. Revising the labeling/marketing requirements for universal waste mercury-containing thermostats at § 273.34 of the regulations for large quantity handlers of universal waste.

Also, the commission adopted amendments to Part 279 standards for the management of used oil. The amendments included the revision of the definition of "used oil collection center" in § 279.1; revision of § 279.24(a)(3); revision of § 279.31(b)(2); addition of § 279.31(b)(3) to reiterate the limits on the burning of used oil in a space heater at a used oil collection center to used oil generated by the owner or operator of the collection center or used oil brought to the collection center by household do-it-yourselfers. Inclusion of this new section was necessary because some owner/operators of used oil collection centers did not understand the regulatory distinction between being the generator of used oil and generally meeting the requirements for a generator of used oil. This distinction is important in that Section 279.23 specifies that used oil burned in an on-site space heater must be used oil generated by the owner or operator or used oil received from household do-it-yourselfers. This amendment also allows used oil that meets the used oil fuel specifications in Section 279.11 to be burned in the space heater as long as the person making that determination complies with applicable standards for used oil fuel marketers in Subpart H of Part 279.

### November 13, 2007

The commission took another solid waste tour on November 13. The first business on the tour was

Guaranteed Recycling Xperts (GRX), 4920 Washington Street, Denver, CO 80216. John Miller, Vice President/G.M., conducted the tour and provided the commissioners with information concerning the proper disposal of electronic waste, or e-waste. The commission members and staff watched a video produced by the Basel Action Network (<http://www.ban.org>) entitled “Exporting Harm.” According to the film, many recyclers export e-waste to developing countries, burdening underprivileged communities with the task of proper disposal. More often than not, these communities do not have the resources necessary to handle e-waste. Next, the Commissioners toured the A-1 Organics Rattler Ridge site, located near the town of Keenesburg, Colorado. Bob Yost, Vice-President of New Business Development, and Todd Loose, Vice-President, Production, Maintenance and Operation, conducted the tour. The facility which consists of 430 acres and is fully permitted in accordance with the department’s composting regulations on composting facilities and receives all types of organic materials.

### *February 19, 2008*

In February, the commission adopted an amendment to § 262.34(d)(5)(iii) which requires documentation of training for small quantity generators (“SQGs”) of hazardous waste and makes the training requirement for SQGs performance-based. The purpose of this amendment was to clarify the training requirements applicable to a SQG of hazardous waste, make compliance with the regulations easier for the generator, and simplify verification of the generator’s compliance with the training requirements by the division.

The commission adopted an amendment to § 265.52 which requires that the location of all hazardous waste accumulation areas at a facility be included in the facility’s contingency plan.

Two amendments were made to the regulations concerning the scope of weekly inspections and corrective action requirements for deficiencies identified during the inspection. Specifically, section 265.174 was amended by:

- a. Revising the regulatory requirement for conducting weekly inspections of areas where containers are accumulated to require a thorough inspection of the containers to ensure that all of the Part 265, Subpart I requirements regarding the use and management of containers and the applicable container labeling requirements of § 262.34 are being met; and
- b. Adding paragraph (b) to § 265.174, requiring that problems identified during the weekly inspections are remedied in accordance with § 265.15(c) of the regulations.

The purpose of these amendments is to ensure that thorough inspections are being conducted; that issues related to compatibility, container closure, and management of ignitable and reactive wastes are checked at least weekly; and that problems identified during the weekly inspections are corrected in a timely manner. The division currently recommends, as a best management practice, that generators maintain a written log of the weekly inspections so that compliance with the inspection requirement can be easily demonstrated by the facility. Colorado Environmental Leadership and EPA Performance Track member facilities may also qualify for a reduced inspection frequency of at least once each month, upon written approval by the department.

Also at the February meeting, the commission adopted an amendment to section 261.5 which requires conditionally exempt small quantity generators (CESQGs) of hazardous waste to maintain and operate their facilities in a manner to minimize the possibility of a release. While the regulations governing large



quantity generators (LQGs) and small quantity generators (SQGs) of hazardous waste required these facilities to operate in a manner to minimize the possibility of a release of hazardous waste or hazardous waste constituents that could threaten human health or the environment, CESQGs had not been required to meet this same standard. The inconsistency in the regulations provided no incentive for CESQGs to properly manage their hazardous waste and may have provided CESQGs with an economic advantage over SQGs and LQGs. These adopted changes eliminated the disparate treatment.

The commission adopted an addition to regulations pertaining to solid waste sites and facilities, 16.6.5, waste tire management standards for collection facilities. At the May 15, 2007 commission meeting, this section 16.6.5 establishing waste tire management standards was reserved to address the concern that the proposed two-year storage limit would place undue burden on collection facilities handling waste tires. It was suggested that some collection facilities, especially those located in rural areas, would require more than two years to accumulate a sufficient volume of tires to make transport of the tires to a recycler economical. Therefore, the division proposed that collection facilities be allowed the flexibility to either adhere to a two-year storage time limit, or to establish financial assurance. This will provide the division with a mechanism to ensure proper management of these wastes at collection facilities.

Also, at this meeting, the commission adopted an amendment of regulations pertaining to solid waste sites and facilities, sections 1.7.1, 1.7.2, and 1.7.3. Through interactive stakeholder negotiations and statewide discussions, the following fee structure was developed for the hourly fees and the annual fees: 1) The hourly fee was increased from \$72.41 to \$125.00 per hour. The hourly fee had not been adjusted since 1991. The current fee proposal of \$125.00 per hour is set to cover the actual hourly expense of solid waste staff plus all overhead and indirect costs of each hour of staff time; and 2) An annual facility fee for solid waste sites and facilities not subject to the solid waste user fees (SWUF). These facilities did not pay a fee to support the costs of the solid waste unit's time and effort incurred in providing oversight, assistance, and enforcement at these locations. The stakeholders involved in the legislative and regulatory stakeholder processes deemed the \$1,000 per year fee to be reasonable.

### ***Interpretive Rules and Administrative Penalties***

The commission has the authority to issue interpretive rules and review administrative law judges' determinations regarding amounts of administrative penalties. The commission has not issued any interpretive rules or conducted any administrative penalty reviews since its inception. However, in August, 2007, a request for an administrative penalty review was filed by the Hazardous Materials Waste Management Division. Through a joint agreement between the department and the Elizabeth Mining and Development, Inc., the commission's penalty review has been stayed pending the outcome of a Denver District Court decision on a related matter.

### ***Other Activities and Forecast for 2008-2009***

All proposed rules that come before the commission will continue to be examined for potential multimedia impacts, pollution prevention opportunities and for regulatory necessity. The commission

encourages all interested parties to participate in its activities and welcomes any suggestions for amendments to the solid waste regulations and the hazardous waste regulations. Individuals or groups can be added to commission's mailing list by contacting the commission office.

### *Commission Information*

Commission information can be found at the following Internet address:

<http://www.cdphe.state.co.us/op/hwc/>

If you have suggestions or comments please let us know.

For more information on the Colorado Hazardous Waste Commission or its Annual Report, please call Karen Osthus of the Colorado Department of Public Health and Environment at (303) 692-3466 or Laurie Perila at (303) 692-3467.