

Solid and Hazardous Waste Commission Annual Report 2008-2009



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 2008 – April 2009

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 1 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 holds a Bachelor's degree from the University of Colorado. Ms. Granberg practices environmental law with the firm of Gablehouse Calkins & Granberg, LLC. Her practice includes advising clients in a broad variety of environmental matters including 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. Ms. Granberg has

lectured in Lucknow, India and Beijing, China 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.

- **Lynn Kornfeld:** Lynn Kornfeld is a partner with the law firm of Faegre & Benson LLP, specializing in environmental, transactional and administrative 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 wide 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 over 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 and compliance support to Waste Management owned/operated solid waste disposal facilities in California, 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 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 remediation.
- **Ann C. Umphres:** Ann Umphres is a 1982 cum laude graduate of 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.
- **Alek M Orloff:** Alek M. Orloff is Chief Financial Officer of Alpine Waste & Recycling, a privately-held Colorado-based integrated waste and recycling services firm named "Top Company" by *ColoradoBiz* magazine in 2008. He has held that position since 2000 and directs all aspects of the company's financial management as well as all environmental site development and compliance activities. He has evaluated numerous acquisition and business development opportunities in that time and has carried out all related acquisition and development processes, including the permitting of waste treatment and disposal sites as well as a successful application for an environmental no-action determination related to the acquisition of a contaminated site. During the 1990s, Alek worked as a management consultant for Deloitte Consulting, LLP in its Reorganization Services Group, advising distressed clients in the retail, manufacturing and financial services industries on financial and operational turnaround measures. Alek received an undergraduate degree (BA) in literature from Colorado College where he also studied petrology and mineralogy. Alek earned a master of business administration degree (MBA) in finance with honors from the UCLA Anderson School where he was

awarded the John E. Anderson Fellowship and served as a teaching assistant in management communications. Alek is an accomplished amateur chef and is married with three children.

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.
- **Roger Freeman:** Roger Freeman maintains a diverse practice in environmental and occupational health law, helping clients address a range of issues, from environmental compliance matters to litigation and arbitration matters. He has organized and overseen numerous clean-up projects, including voluntary clean-up initiatives and other remediation efforts. Mr. Freeman applies his diverse background as an Adjunct Professor at the University of Denver College of Law, and as a member of various environmental boards, to see multi-faceted solutions to complex environmental problems on behalf of his clients. For example, he was a key player in the brownfields clean-up surrounding the construction of the Pepsi Center Arena in Denver. Mr. Freeman is active in a variety of renewable energy and transportation projects and groups throughout the Rocky Mountain West and California. He has worked with solar and waste-to-energy companies on government relations and legislative initiatives. He has an extensive network of political and agency relationships dating back to the work of his father, S. David Freeman, who has been a preeminent force in the emergence of renewable energy and conservation issues since the 1960s. Mr. Freeman uses his experience and understanding to help expedite project steps and creatively solve legal constraints to the development of renewable and advanced transportation projects. Mr.

Freeman has vast expertise in environmental and safety issues surrounding traditional energy development as well. Building on his diverse experience with industry, conservation interests, and government entities, he specializes in building coalitions and overcoming project hurdles.

- **William Patterson:** Bill was born and raised in Ohio and has lived in Colorado since 1976. Bill has extensive business, engineering and public service experience. He is Director of Engineering at TEI Rock Drills in Montrose. Mr. Patterson served as Montrose County Commissioner from 2005-2009 and on the Montrose City Council from 1996-2002 and was elected Mayor in 1999 and 2000. Mr. Patterson holds a graduate degree in Mechanical Engineering, and graduated Summa Cum Laude with 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 50 years and have 6 children. They owned a hay farm in Ohio and sold Case/ I.H. farm and construction equipment.

Rulemaking Hearings and Public Outreach

May 15, 2008

On May 15, 2008, the commission held its business and annual meeting. Section 6.04(a) was revised to reflect the annual fees being assessed for fiscal year 2008-2009. The fees, which fund the operation of the commission, were not adjusted. During the annual meeting, the commission heard from Paul Frohardt, Director, Office of Environmental Integration and Sustainability, and Joe Schieffelin, Compliance Program Manager, Hazardous Materials and Waste Management Division (“division”), regarding the new oil and gas regulations. Ginny Brannon, Climate Change Manager, provided an informative talk on the Colorado Climate Action Plan.

August 19, 2008

The commission met on August 19, 2008. The commission tentatively approved Advanced Surface Technologies, Inc, located at 6155 West 54th Avenue in Arvada, CO 80002, petition to conditionally delist F006 and F019 hazardous wastewater treatment sludge. This delisting will allow Advanced Surface Technologies to dispose of this waste at a Subtitle D solid waste landfill that meets the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2), provided it complies with the conditions of the delisting specifying disposal, record keeping, storage and sampling requirements for the delisted sludge. The commission is requiring that annual verification sampling of the delisted waste be submitted to the division within sixty (60) days of the sampling event for review against initial delisting criteria and sampling methodology. As an alternative to disposal in a Subtitle D solid waste landfill, the sludge could be sent to a metal recycling facility. Recycling the wastewater treatment sludge to reclaim heavy metals would further reduce the potential harm to human health and the environment posed by this waste.

AST operates 11 metal finishing lines at its Arvada facility. Metal plating operations include nickel, tin, copper and precious metals. Burnishing, passivation and anodizing finishing operations are also conducted on-site. Rinse wastewater from AST's metal finishing lines is conveyed to an on-site pretreatment system for metals removal. The rinse wastewaters undergo pH adjustment, filter pressing and micro-filtration prior to being discharged to the sanitary sewer under an industrial discharge permit issued by Metro. AST's on-site wastewater pretreatment of electrolytic and electroless plating rinses generates approximately 1,400 pounds of wastewater treatment sludge on a weekly basis. The wastewater treatment sludge is regulated as an F006 and F019 listed hazardous waste.

At this meeting, the removal of delisting #002 in Part 261, Appendix IX re: NTI, A Division of Colorado Springs Circuits, Inc. was discussed. NTI was granted a conditional delisting on August 20, 1996 for wastewater treatment sludge generated from electroplating operations at the facility. On June 20, 2000, the division received formal notice indicating that operations had ceased at the facility on December 31, 1999, and NTI had completed all closure activities at the facility as of May 18, 2000. Therefore, NTI's August 1996 conditional delisting was no longer applicable. The commission adopted the amendment to remove delisting #002 in part 261.

Also, the removal of delisting #007 in Part 261, Appendix IX re: Golden Aluminum, Inc. was adopted. The company notified the division on February 12, 2008, that the facility would be converting its titanium conversion coating process to a chrome conversion coating process effective February 18, 2008. Since delisting determinations are made on a case-by-case basis with respect to a specific waste generation process, this change to a new chromate conversion coating process using hexavalent chromium was a significant change from the titanium conversion coating process described in Golden Aluminum's April 8, 2005 delisting petition. On March 24, 2008, the division issued a letter to Golden Aluminum stating that the 2005 delisting no longer covered the wastewater treatment sludge generated at the facility, and that the wastewater treatment sludge generated from the new chromate conversion coating process must be collected and managed as a hazardous waste with the waste code of F019.

The commission heard from Charles Johnson, Solid Waste Unit Leader, regarding the amendment of 6 CCR 1007-2, Section 1.7.4 to establish annual fees for recycling facilities. The division initiated a legislative stakeholder process in October 2006 for the development of language pertaining to House Bill 07-1288. In an effort to support HB 07-1288, draft implementing regulations for Section 1.7.2 and 1.7.3 were developed as part of the stakeholder process. After the legislative session, a follow-up stakeholder process was begun in June 2007. Regulations amending Sections 1.7.2 and 1.7.3 of the Solid Waste Regulations, excepting annual fees for recycling facilities, were developed to support implementation of HB-1288. These rules were promulgated during the February 2008 rulemaking hearing before the commission and became effective on April 1, 2008. Mr. Johnson informed the commission that the Solid Waste and Material Unit of the division does not receive any general fund monies and is completely supported by fees. The fees were historically comprised of two sources including: 1) the Solid Waste User Fees (SWUF) also referred to as the Hazardous Substance Response Fee or tipping fees and 2) hourly activity fees. The SWUF and hourly activity fees were established in statute and regulation respectively. The majority of the fees to support the Solid Waste unit are derived from the SWUF, which is a fee based on the volume or weight of waste placed at attended solid waste disposal sites and facilities. As part of the HB 07-1288 legislative stakeholder process a significant majority of the stakeholders in both the legislative and regulatory processes supported the development and

implementation of an annual facility fee for solid waste sites and facilities not subject to the SWUF. Through interactive stakeholder negotiations, an annual facility fee of \$1,000/year per facility was established for each facility type identified in Section 1.7.3. However, additional stakeholder concerns were raised indicating that the proposed \$1,000/year per facility fee was too burdensome for some recycling facilities. The portions of the regulation that applied to recycling facilities were “reserved” during the February 2008 rulemaking hearing to allow additional stakeholder input regarding an appropriate fee amount for the recycling facilities. Based on information gained in May and June 2008 from the 2007 recycling data survey, the division has now identified approximately 60 facilities that qualify as recycling facilities. In an effort to maintain a simplified fee collection structure and to remain true to the division’s initial goal of generating \$9,000/year in recycling facility revenue, the division proposed an annual recycling facility fee of \$150/year for each of the recycling facilities with an annual evaluation with the goal of determining whether adjustments are needed. The commission adopted this amendment unanimously.

November 18, 2008

The commission granted final approval of the Amendment of Part 261, Appendix IX to Conditionally Delist F006 and F019 Hazardous Wastewater Treatment Sludge Generated by Advanced Surface Technologies, Inc., located at 6155 West 54th Avenue in Arvada, Colorado 80002. The petition was tentatively approved by the commission on August 19, 2008. The commission did not receive any public comment during the comment period that ran through October 10, 2008.

In response to new requirements adopted by the Colorado General Assembly in 2008, the commission considered amendments to the solid waste regulations pertaining to Commercial Exploration and Production (EP) wastes (6 CCR 1007-2, part 1, sections 17 and 1.2). House Bill 08-1414 (“the Act”) directed the commission to promulgate regulations specifically applicable to commercial exploration and production waste impoundments. The Act prescribed several provisions that these rules must contain, including setbacks, fabricated liners, monitoring to prevent migration to groundwater, waste analysis and reporting, fencing and netting, contingency plans and financial assurance. The Act also specified a schedule for existing facilities to achieve compliance with the new rules. The division proposed a new section, Section 17, to implement the Act. In addition to implementing the statutory requirements cited above, the proposed new Section 17 regulations serve to update the existing requirements for EP waste impoundments, currently found in Section 9 of the Regulations. The division engaged in an extensive stakeholder process involving the waste management industry, local governments, the utility sector, oil and gas services companies, public interest groups and others when developing the proposal. The commission adopted the amendments on November 18, 2008. A legal challenge to the rules was filed in Denver District Court January 29, 2009. (Fourmile Recycling, Inc. et al v. Colorado Solid and Hazardous Waste Commission, Case No. 2009 CV 1240).

At this meeting, the commission also considered amendments to solid waste regulations concerning composting (6 CCR 1007-2, Part 1, section 14). The division proposed the repeal of the existing Section 14 composting regulations, and replaced them in their entirety with a re-written and restructured version. The major amendments proposed included: 1) clarifying the applicability of the Section 14 regulations, and specifying the types of composting operations that are exempt from these regulations; 2) adding schedules

for compliance with these Section 14 regulations; 3) better defining the classification of composting facilities based upon the types of feedstocks received by the facility and the nature of the operation; 4) adding a new composting facility classification (Class V); 5) specifying the general requirements that apply to all classifications of composting facilities; 6) adding class-specific requirements for composting facilities; 7) modifying the requirements for sampling of finished compost; 8) modifying the closure and post-closure care and maintenance requirements for compost facilities; 9) adding composting plan requirements for Class IV and Class V composting facilities; and 10) modifying the requirements for pilot projects.

After an extensive stakeholder process which included four meetings with representatives from the composting industry, agricultural producers, industry consultants, local governments and the Colorado Department of Agriculture, the division finalized its proposal. The purposes of the revisions to Section 14 are fourfold. First, the composting industry has changed significantly since the original promulgation of Section 14 in 2000 and these revisions reflect the current state of practice of this industry. Second, the regulatory exemption language for agricultural waste generators who compost their own agricultural waste and import solid waste required modification to ensure protection of public health and the environment. Third, the addition of a new composting facility classification, Class V, will provide a regulatory framework for agricultural producers to compost their own waste, import other compatible solid waste in types and quantities for effective composting, and sell or distribute compost to the public. Finally, in an effort to promote composting, reduce staff time to review plans, and provide a balanced regulatory structure, Class IV and V composting facilities will not be required to submit a design and operations plan. Instead, these facilities will be required to operate under the standards set forth in Section 14.11. A written composting plan that describes procedures and practices for compliance with the requirements in Section 14.11 must be maintained onsite, reviewed and understood by site personnel, and made available for review to the Department during routine inspections or when a complaint is received regarding the composting operations. The commission adopted the amendments unanimously.

February 17, 2009

The commission conducted its first administrative penalty review hearing, Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, v. Elizabeth Mining and Development, Inc., Joseph Casebolt and Steven Casebolt at the February 17, 2009 meeting. A representative from Elizabeth Mining and Development, Inc., was unable to attend the hearing due to a family emergency. After testimony from the division's counsel, Rob Eber, Attorney General's Office, the commission took a straw vote to have Ms. Umphres draft an opinion adopting the proposed findings of fact and conclusion of law, and setting the penalty at \$405,000. This draft decision will be available for review and comment prior to making a final decision on May 19, 2009.

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. As mentioned above, the commission conducted the administrative penalty review hearing at the February 17, 2009 meeting.

Other Activities and Forecast for 2009-2010

All proposed rules that come before the commission will continue to be examined for potential multimedia impacts, climate change reduction and pollution prevention opportunities, and 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 Solid and 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.