

# Solid and Hazardous Waste Commission Annual Report 2010-2011



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 2010 – April 2011*

### **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 wastes, must be identical to the federal hazardous waste rules.

In May of 2009, the Commission authorized a standing subcommittee to examine greenhouse gas minimization and waste management strategies. The Subcommittee on Carbon Reduction and Waste Minimization, which is chaired by Commissioner Roger Freeman, held its first meeting in August 2009 and met several times in 2010. The Subcommittee continues to explore a variety of avenues wherein the Commission can promote and advocate waste reduction, reuse and recycling efforts in the state. Minutes from the sub-committee meetings can be found on the Commission's website:

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

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

- **Melanie Granberg:** Ms. Granberg is an environmental attorney with the law firm of Gablehouse Calkins & Granberg, LLC in Denver. She earned her juris doctor degree from the University of Denver and holds a Bachelor of Arts degree from the University of Colorado. Ms. Granberg's practice encompasses a wide variety of environmental matters including assisting clients with environmental site investigation and remediation, transactional work, regulatory compliance, environmental audit and voluntary

disclosure, administrative proceedings, insurance coverage disputes and litigation. Her work involves such topics as CERCLA, RCRA, CWA, CAA, asbestos, mold and methamphetamine remediation. Her practice also includes advising local governments and communities in emergency planning related to chemical accident prevention. She has lectured in Lucknow, India and Beijing, China on these topics. Ms. Granberg is the current environmental law article editor for The Colorado Lawyer, a board member of the Colorado Association for Meth and Mold Professionals, and the former president of the Colorado Hazardous Waste Management Society. She is a member of the American, Colorado and Denver Bar Associations.

- **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 for Colorado and Utah 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 25 years of experience managing corporate, consulting, construction, industrial, and retail compliance. As an Environmental, Health, and Safety Manager/Director for such notable companies as Johns Manville, 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 is a 1985 graduate of George Washington University, National Law Center with a Juris Doctor degree. Ms. Umphres served as an associate with Cockrell, Quinn & Creighton from 1985-87. She also served as Assistant Regional Counsel with the U.S. Environmental Protection Agency, Region VIII, from 1987-1995 where she handled cases involving CERCLA, RCRA, TSCA, FIFRA, UST and other assorted environmental issues and statutes. She was President of the Law Firm of Ann C. Umphres, P.C. specializing in environmental and natural resources law matters from 1995-2010. In March of 2010, Ms. Umphres joined the Solicitor's Office, Department of the Interior, Rocky Mountain Region where she serves as legal counsel on BLM matters involving CERCLA, natural resource damages, NEPA, abandoned mine clean ups and other environmental and public land 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, the Colorado Association for Recycling's "Most Outstanding Business" in 2009, and a *ColoradoBiz* "Colorado Company to Watch" in 2010. 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. Alek was elected to the Board of Directors for the Colorado Chapter of SWANA (Solid Waste Association of North America) in April, 2011. 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 courses in hazardous waste law and environmental litigation. 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 with Davis Graham & Stubbs 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 seek multi-faceted solutions to complex environmental

problems on behalf of his clients. For example, he was a key player in the Brownfield's 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.

Mr. Freeman often tackles environmental issues associated with the mining industry, including remediation of mine wastes. He is the long-time Environmental Editor for the *Rocky Mountain Mineral Law Foundation's Mineral Law Newsletter*. His numerous publications in the mining field include "Clean-up on the Federal Lands Meet the Private Sector" published by the Rocky Mountain Mineral Law Foundation in 1998.

Mr. Freeman has vast experience in handling environmental issues related to uranium mill tailings and other radioactive materials. He has worked with numerous mining companies on UMTRCA and NRC compliance matters and licensing proceedings. He has worked with a number of medical and research institutions, including the National Jewish Center in Denver, on the handling and disposal of radioactive isotopes and other source materials generated in this process. He has spearheaded environmental due diligence teams on numerous transactions involving nuclear materials and regularly interacts with technical personnel in his practice.

Mr. Freeman also represents clients on occupational safety and health matters, including interactions with the U.S. Occupational Safety and Health Administration ("OSHA"). He has assisted numerous companies and other entities in responding to OSHA investigations, interpreting OSHA regulations, and handling OSHA citations and penalty proceedings.

Mr. Freeman takes pride in giving pragmatic, sound counseling in all areas of law, often providing basic business counseling to his clients. He is an expert in seeking recovery for environmental costs under insurance policies. Whether through counseling, negotiation, litigation or alternative dispute resolution processes, Mr. Freeman emphasizes cost-effective solutions to environmental and occupational health issues for each of his clients.

- **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 was elected for a two-year term to the Montrose City Council which started April 15, 2010. 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 18, 2010

On May 18, 2010, the Commission held its business and annual meeting. Section 6.04(a) was revised to reflect the annual fees being assessed for fiscal year 2010-2011. The fees, which fund the operation of the Commission, were not adjusted.

The Commission also corrected errors and inadvertent omissions that existed in the Table of Contents for Part 260, and the K901 listings in the table at § 268.40. These amendments were inadvertently omitted and not included as part of the rulemaking hearings that were adopted at the February 16, 2010 meeting.

At this meeting, the Commission revised the existing standards applicable to transporters of hazardous waste in Colorado by amending the requirements applicable to transfer facilities located in the state. These amendments were developed as part of a review of the Part 263 regulations conducted by the Hazardous Materials and Waste Management Division (the "Division") to update and improve the existing regulations that apply to transfer facilities. The amendments are designed to encourage and effectuate effective responses to incidents at transfer facilities. Input from key stakeholders, including eight transfer facilities and representatives of the Colorado Emergency Planning Commission and the South Metro Fire Rescue Authority, were also incorporated into the development of these regulations.

The Division's review of the Part 263 regulations was initiated by a request from the Solid and Hazardous Waste Commission following a February 2009 briefing regarding a fire that occurred on October 5, 2006 at the Environmental Quality Co. (EQ) hazardous waste transfer facility in Apex, North Carolina. Mr. William Wright of the United States Chemical Safety and Hazard Investigation Board (CSB) provided a presentation on the North Carolina incident at the February 17, 2009 Commission hearing. The CSB conducted a formal investigation into the fire, and published a case study, *Fire and Community Evacuation in Apex, North Carolina* (2007-01-I-NC, April 16, 2008, which is available online at <http://www.csb.gov/assets/document/EQFinalReport.pdf>).



The annual meeting, **Perspectives on Recycling and Reuse in Colorado: Lessons Learned and New Initiatives**, focused on recycling and reuse projects in the state. The Commission heard interesting presentations from Division staff on the current state of recycling and various solid waste programs in Colorado. Additionally, Summit County Commissioner Thomas Davidson provided information on the Summit County Resource Allocation Park (SCRAP) and Rich Ludwig, Pitkin County Compliance and Outreach Coordinator, gave a presentation on recycling in Pitkin County. Representing the private sector perspective was Justin Parker from WE RECYCLE, and Curtis Hill of Waste Connections, Inc. Mr. Parker described the genesis of WE RECYCLE as the first full-scale recycling program in Southern Colorado. Mr. Hill outlined several recycling projects initiated by Waste Connections such as the Landfill Methane Gas-to Energy Project in Erie, Colorado; and the proposed Sustainability Center Project in Sedalia, Colorado.

### **August 17, 2010**

There were no rulemaking hearings at the August 17, 2010 Commission meeting. Division staff provided several informational briefings, including an update on the work being done on solid waste surface impoundment rules. For more information on the briefings please go to the minutes of the August 17, 2010 meeting which can be found at

<http://www.cdphe.state.co.us/op/hwc/Minutes/2010Minutes/final081710minutes.pdf>

### **November 16, 2010**

At this meeting, a rulemaking hearing was held to consider the proposed Solid Waste User Fee (SWUF). This rulemaking was in response to House Bill 10-1329 which contained six major provisions including: 1) moving limited solid waste user fee authority from the legislature to the Commission; 2) establishing individually adjustable fees for the SWUF, the hazardous substance response fund (HSRF), and a new fee for the Department of Law (DOL); 3) setting a SWUF ceiling of \$0.50 for these fees; 4) setting a HSRF ceiling of \$10,000,000; 5) providing advanced facility notification of fee changes prior to the effective implementation date; and 6) establishing the SWUF sunset date as July 1, 2017. Because the Solid Waste and Material Management Unit does not receive any general fund monies, fees support 100% of unit activities. As part of the HB 10-1329 stakeholder process, fee amounts for the Solid Waste Program, the Hazardous Substance Response Fund and the Department of Law were developed and discussed with stakeholders.

Also at this meeting, amendments to §100.63 and its Appendix I were considered. The changes removed the permit modification provisions for EPA Performance Track member facilities and had been inadvertently excluded from the amendments adopted by the Commission on August 18, 2009.

An additional informational briefing on Section 9, Surface Impoundments rules was presented to the Commission members. Mr. Johnson and Jerry Henderson, Solid Waste Compliance Work Leader, informed the Commission that because of additional stakeholder issues, the process is being extended so that a resolution can be reached and a rulemaking hearing held in the spring/summer of 2011. For additional information concerning this briefing, please go to <http://www.cdphe.state.co.us/op/hwc/shwcminutes.html>



Finally, an informational briefing was provided regarding waste tires and the implementation of House Bill 10-1018. For more information on this briefing, please go to <http://www.cdphe.state.co.us/op/hwc/shwcminutes.html>

### February 15, 2011

At the February 15, 2011 meeting, the Commission adopted several changes to the solid waste regulations regarding waste tires. The purpose of these new regulations was to implement the requirements of HB10-1018, which set up a cradle-to-grave management scheme for waste tires to ensure that all newly generated waste tires are accounted for and properly recycled or dispositioned. These regulations set out the requirements for each type of facility or entity within the cradle-to-grave “lifespan” of a waste tire. These entities include tire retailers and wholesalers that generate waste tires as they replace old tires with new tires in transit; waste tire end-users and processors that either manufacture waste tires into new products or turn waste tires into useable feedstocks; and waste tire monofills that store waste tires for extended periods.

Also at the February 15, 2011 meeting, a rulemaking hearing regarding amendments to hazardous waste fees was held. The Division explained that after two years under the present hazardous waste fee structure, the Division determined that a one-year temporary **decrease** of 12% in hazardous waste fees was necessary for Calendar Year 2011. The reasons for this decrease included lower expenditures than originally forecast and more revenue collected than initially anticipated. This fee decrease became effective on April 1, 2011. However, the new decreased fees were retroactive to January 1, 2011 and will continue through December 31, 2011.

Brian Gaboriau and Patrick Hamel, Environmental Health and Sustainability Division, provided an informational briefing on the waste tire processor and end-user rules that are being developed. Mr. Gaboriau explained that the proposed rules have been presented to stakeholders and a rulemaking hearing will be set for May 17, 2011.

### *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. At the May 2009 meeting, the Commission set an administrative penalty levied against Elizabeth Mining and Development, Inc., Joseph Casebolt and Steven Casebolt at \$405,000. A copy of the findings of fact and conclusion of law can be obtained from the Commission office. No interpretive rules were issued.

### *Other Activities and Forecast for 2011-2012*

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.