

# **Solid and Hazardous Waste Commission Annual Report 2011-2012**



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 2011 – April 2012*

### **Commission and Its Members**

In 1992, §25-15-302, C.R.S. established the Hazardous Waste Commission. 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 retains 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 certain conditions are met. The Commission must make a written finding, after public hearing and substantial evidence in the record, that the action is necessary to protect public health and environment. Additionally, six Commissioners must vote for the action and the Commission is required to 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. Commissioner Roger Freeman chairs the Subcommittee on Carbon Reduction and Waste Minimization. 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 are available 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. Ms. Granberg currently serves as the Secretary for the Commission.

- **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.

- **John Kehoe:** John Kehoe received a Bachelor of Science degree in chemistry from George Mason University in 1982 and a Master of Science degree in environmental engineering from Johns Hopkins University in 1998.

John is currently the manager of the Clean Harbors Deer Trail hazardous waste treatment and land disposal facility where he is responsible for all operations and the environmental compliance of the facility. He previously held managerial and technical positions at a similar waste treatment and land disposal facility in Utah and managed contract operations for the hazardous and radioactive waste facility for a large federal government agency in Maryland.

John has spent 28 years in the commercial hazardous waste management field and has been involved in all aspects of the collection, packaging and transportation of hazardous waste. He has managed and designed waste treatment systems for hazardous and radioactive waste, wastewater treatment operations and operation of final disposal sites.

### *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. Myers is currently the Director of Environmental Programs for Johns Manville. Mr. Myers' 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. Ms. Umphres currently serves as the Chair of the Commission.
- **Alek M Orloff**: Alek M. Orloff is Chief Financial Officer of Alpine Waste & Recycling, Colorado's only privately-held integrated solid waste and recycling services firm named "Emerging Company of the Year" in 2012 by the Association for Corporate Growth, a "Colorado Company to Watch" by the Edward Lowe Foundation in 2010, the Colorado Association for Recycling's "Most Outstanding Business" in 2009, and "Top Company" by *ColoradoBiz* magazine in 2008. He 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 2011 and he joined the Board of Directors for the Adams 14 Education Foundation in 2010. During the 1990s, Alek worked as a management consultant for Deloitte & Touche 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. Mr. Neumann is the current Vice-Chair of the Commission.

- **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 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 Brownfields clean-up surrounding the construction of the Pepsi Center Arena in Denver.

Mr. Freeman has a long and diverse history in the field of solid waste recycling, handling and disposal. He is currently engaged in projects ranging from composting to improving treatment technology for medical waste. He is a long-time advocate of recycling and other waste minimization programs and takes an active role in these issues on the Solid and Hazardous Waste Commission, where he formed a recycling and waste minimization subcommittee to address these matters.

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. 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 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 17, 2011

On May 17, 2011, the Commission held its business and annual meeting. Section 6.04(a) was revised to reflect the annual Commission fees being assessed for fiscal year 2011-2012. The fees, which fund the operation of the Commission, were not modified.

At this meeting, the Commission adopted new regulations that created the Waste Tire Processor and End User Reimbursement Program within the Division of Environmental Health and Sustainability at the Department. The Department of Local Affairs previously operated this program before being transferred to the Department in 2010. The rules adopted by the Commission set forth the guidelines for reimbursement from the Processors and End Users Fund. Specifically, the rules define who is eligible for reimbursement; establish application procedures; establish a reimbursement formula; outline a process to review applications; and create an inspection process to oversee parties that apply to the Fund.

The Commission corrected errors that existed in the Section 10 Solid Waste Regulations. These amendments corrected inadvertent errors that existed in Section 10 Regulations that were adopted by the Commission at the February 15, 2011 meeting.

The Commission also held a rulemaking hearing regarding amendments to Section 1.7.2, the Document Review and Activity Fees. The existing rules contain limitations on the hours the program can spend on a review and the allowable amount charged to an applicant. These amendments provided accountability mechanisms in the review process.

The Commission also considered amendments to change all “Hazardous Waste Commission” references to the “Solid and Hazardous Waste Commission”. This change was necessary to reflect the name change that was a result of Senate Bill 06-171. The Hazardous Waste Commission was renamed the Solid and Hazardous Waste Commission in 2006.

The annual meeting, **The Denver Federal Center – A Microcosm of Remediation Challenges and Redevelopment Success**, focused on the challenges of remediating a large site with a rich history of varied uses. The Commission heard presentations from Division staff and representatives from the Denver Federal Center. Additionally, the Commission toured the site to see the current redevelopment projects first-hand.

### August 16, 2011

There were several rulemaking hearings at the August 16, 2011 Commission meeting:

#### 6 CCR 1007-3, Medical Wastes

In response to the changing nature of medical wastes (infectious and non-infectious wastes) and their impact on the environment, the Commission adopted the Division’s proposed amendments to 6 CCR 1007-2, §§1.2

and 7.1(D) and replacement of §13 concerning medical wastes. The amendments updated the existing regulations governing infectious waste and expanded the section to include non-infectious solid wastes, such as chemotherapy waste and waste pharmaceuticals. The regulations now make it clear that only solid waste sites and facilities that include non-hazardous waste pharmaceuticals and other medical wastes in their approved Engineering Design and Operations Plan may accept these wastes.

6 CCR 1007-3, Revisions to the Organization for Economic Cooperation and Development (OECD) Requirements for Export Shipments of Spent Lead-Acid Batteries

The Commission approved amendments that implemented recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD). The rules established notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country and specified that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C. Additionally, the rules required U.S. receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

6 CCR 1007-3, Amendment of Section 100.31(a) (1) (xii) and Addition of: "Environmental use restriction" and "Notice of Environmental use restriction" definitions to Section 260.10

The Commission, in order to clarify that the Department is authorized to charge document review fees for time spent reviewing, evaluating and responding to documents submitted or required to be submitted in connection with notices of environmental use restrictions, adopted the above-referenced changes. The express inclusion of these terms removes any confusion that may have existed.

The Commission made several technical corrections to the following rules:

- 6 CCR 1007-2, Section 1.7.4(C), the Solid Waste User Fee – Allowable expenditures and reporting - revises statutory citation.
- 6 CCR 1007-3, Parts 262, 264 and 265 Amendment of Manifest Regulations-corrects inadvertent errors and omissions in Colorado's analog to the federal manifest rules.

*November 15, 2011*

At this meeting, the Commission amended regulations pertaining to Solid Waste Sites and Facilities, Section 13.2.5(C) (Incorporation by Reference). This change was necessary in order to respond to issues raised by the Office of Legislative Legal Services concerning required elements in the Administrative Procedures Act to incorporate documents by reference.

Additionally, the Commission held a rulemaking hearing to consider amendments to the Hazardous Waste Fees. This rule lowered the hazardous waste fees by 30% for calendar year 2012. This rule was necessary in order to comply with Section 24-75-402 C.R.S., which prohibits a fund balance that exceeds 16.5% of the previous year's expenditures. The increased fund balance was a result of an unexpected increase in revenues and a decrease in program costs.

A rulemaking hearing was held on November 15 and December 16, 2012 to consider amendments to regulations pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Addition of Section 18 (Waste Grease) and Section 1.7.5 (Waste Grease Annual Fees), and associated additions to Section 1.2 (Definitions, Section 1.5.2 (Waiver Processes and Procedures, and Section 1.7.3 (Annual Fees). The purpose of these amendments was to implement the provisions of House Bill 10-1125. The regulations adopted by the Commission on December 16, 2011 set out requirements for waste grease transporters and waste grease collectors, handlers, and storage and processing facilities. The rules established a management scheme for trap grease and yellow grease that ensure that these waste greases are properly recycled or disposed.

### *December 16, 2011*

At this meeting, the Commission continued to hear testimony concerning proposed waste grease rules discussed above. After considerable discussion and deliberation, the Commission adopted the Division's proposal with minor amendments. For more details concerning the rulemaking hearing, please see the meeting summaries at <http://www.cdphe.state.co.us/op/hwc/shwcminutes.html>.

### *February 21, 2012*

At the February 21, 2012 meeting, the Commission adopted changes to the solid waste regulations regarding the reduction of the Solid Waste User Fee in the Hazardous Substance Response Fund. This regulatory change was necessary to comply with the requirements of House Bill 10-1329 which set a \$10,000,000 ceiling on the Fund. When the Commission originally set the fee in 2010, the Division projected that over a three-year period the balance in the Fund would be below the statutory cap. Due to increased revenues and decreased expenditures in fiscal year 2011 a fee reduction was needed to keep the balance below \$10,000,000. The changes adopted by the Commission reduced the portion of the Solid Waste User Fee that goes into the Fund from sixteen cents per cubic yard to five cents per cubic yard.

Also at the February 21, 2012 meeting, the Commission held a rulemaking hearing regarding the deletion and replacement of Section 8 of the solid waste regulations pertaining to recycling and other associated definitions. The amendments adopted by the Commission implemented the provisions of House Bill 07-1288 concerning data collection from recycling facilities, established a classification system for recycling operations and concordant requirements for each class, set standards for the beneficial use of solid waste, and removed ambiguous regulatory language and definitions. The changes also established criteria and testing protocols for sites to use for demonstrating beneficial use prior to using materials in a project.

Finally, the Commission adopted the deletion and replacement of Section 9 of the solid waste regulations regarding waste impoundments and the revision of the definition of "sludge". These changes were the result of several years of stakeholder meetings and discussions and represented a comprehensive overhaul of the existing waste impoundment rules. For specifics on the changes adopted by the Commission, please see the Statement of Basis and Purpose at <http://www.cdphe.state.co.us/regulations/solidwaste/100702part1SWRegsStatementsofBasisandPurpose.pdf>

### *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 did not review any administrative penalties or issue interpretive rules in 2011.

### *Other Activities and Forecast for 2012-2013*

All proposed rules that come before the Commission will continue to be examined for potential multimedia impacts, recycling and reuse opportunities, and regulatory necessity. As has been the case for the last two



years, the Commission's work will likely focus on the solid waste arena in 2012 and 2013. The Division will present a proposal in the fall of 2012 that will significantly change the current regulation of asbestos in soils. This and other changes will keep the Commission active and engaged for the near future.

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.

Due to term limits of current Commission members, three new members are being sought for the following positions: regulated industry representative, public at large representative, and government or academic community representative. Interested persons are encouraged to apply to the Governor's Office of Boards and Commissions. An application is available online at <http://www.colorado.gov/cs/Satellite/GovHickenlooper/CBON/1249674847715>

### *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 Brandy Valdez Murphy, Program Assistant at (303) 692-3467.