

1 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**
2

3
4 **Solid and Hazardous Waste Commission/Hazardous Materials and**
5 **Waste Management Division**
6

7
8 **6 CCR 1007-3**
9

10
11 **HAZARDOUS WASTE**
12

13 **Deletion and Replacement of Existing Part 7 Regulations (Procedural Rules of the**
14 **Hazardous Waste Commission) with New Part 7 Regulations (Procedural Rules of the**
15 **Solid and Hazardous Waste Commission)**
16

17
18 **1)The existing Part 7 Regulations (Procedural Rules of the Hazardous Waste**
19 **Commission) are being deleted in their entirety and replaced with new Part 7 regulations**
20 **(Procedural Rules of the Solid and Hazardous Waste Commission) to read as follows:**
21

22 **Part 7 – Procedural Rules of the Solid and Hazardous Waste Commission**
23

24 **§ 7.01 Introduction**
25

26 (1) The Colorado Solid and Hazardous Waste Commission (Commission) is authorized by the General
27 Assembly to oversee Colorado’s hazardous waste management program pursuant to the Colorado
28 Hazardous Waste Act, Section 25-15-101, *et seq.*, C.R.S. (CHWA) and the solid waste management
29 program pursuant to the Colorado Solid Waste Disposal Sites and Facilities Act, Section 30-20-101, *et*
30 *seq.*, C.R.S. (SWDA).
31

32 (2) The primary role of the Commission is to adopt regulations that implement the hazardous waste and
33 solid waste management programs to minimize waste, develop safe alternative methods for the treatment
34 of waste and protect the health of Colorado’s citizens and visitors and its resources.
35

36 (3) The Commission is composed of nine citizen members appointed by the Governor and confirmed by
37 the Colorado State Senate. The membership is divided to represent three groups: regulated industry,
38 academia and the public at large.
39

40 (4) The activities of the Commission are open to the public, with the exception of those instances in which
41 the Commission is permitted by law to meet in executive session pursuant to the Open Meetings Law,
42 Section 24-6-401, *et seq.*, C.R.S. The Commission encourages public participation to its fullest extent.
43 The Commission’s Procedural Rules are intended to promote open, fair and effective proceedings with
44 the input, participation and consideration of the general public. Persons appearing before the Commission
45 are encouraged to make well-planned presentations that use clear, concise, common sense language to
46 explain their points of view and can assist the Commissioners in making informed decisions.
47
48
49

50 **§ 7.02 Authority, Scope, and Purpose**

51
52 (1) Authority for the Commission to promulgate these procedural rules is found at Section 25-15-
53 302(7)(b), C.R.S. These rules are intended to implement and be consistent with the requirements of the
54 State Administrative Procedure Act, Sections 24-4-101, *et seq.*, (APA) as amended, CHWA, Sections 25-
55 15-301, *et seq.*, C.R.S., and SWDA Sections 30-20-101, *et seq.*, C.R.S. Where there is a conflict between
56 the requirements of the APA, CHWA and the SWDA, the provisions of CHWA, Sections 25-15-301, *et*
57 *seq.*, C.R.S. shall prevail.

58
59 (2) These procedural rules shall govern all procedures and hearings before the Commission and are
60 intended to assure that such procedures and hearings are fair and impartial as required by Section 25-15-
61 302(7)(b), C.R.S.

62
63 (3) Except as necessary to comply with the applicable statutes, the requirements of these rules may be
64 waived whenever the Commission determines that strict adherence to these rules is not in the best
65 interests of fairness, impartiality, or an efficient proceeding before the Commission. A party to any
66 proceeding before the Commission who, during the proceeding, fails to raise an objection regarding lack
67 of compliance with any procedural requirement of these regulations waives that issue for the purpose of
68 judicial review.

69
70 (4) It is the intent of the Commission to conduct its duties and responsibilities in a manner which fosters
71 substantive discussion on the issues and minimizes burdensome procedures which impede the
72 Commission's substantive work.

73
74 **§ 7.03 Definitions**

75
76 For purposes of this Part 7, the following definitions shall apply:

77
78 (1) **“Actual conflict of interest”** means an inability of a Commissioner to objectively participate in the
79 matter before the Commission because the Commissioner has an unalterably closed mind on a matter
80 critical to the disposition of the proceeding. An official act that affects a group of industries or businesses
81 does not, in and of itself, constitute an actual conflict of interest even though the Commissioner may work
82 for or otherwise have an interest in one of the industries or businesses impacted.

83
84 (2) **“Alternate proposal”** means any new substantive proposed rule text offered for the Commission's
85 consideration and approval, including wholly new regulation text, or amendments or revisions to
86 previously proposed regulation text. Proposed text that simply deletes, clarifies or elaborates on elements
87 of an already-submitted proposal, without substantive new obligations or requirements is not an alternate
88 proposal.

89
90 (3) **“Apparent conflict of interest”** means a personal or financial interest which could reasonably be
91 perceived as an interest that may influence the Commissioner's decision.

92
93 (4) **“Commission”** means the Solid and Hazardous Waste Commission.

94
95 (5) **“Commission Administrator”** means the individual holding the position created by Section 25-15-
96 302(9)(a), C.R.S.

97
98 (6) **“Commission Assistant”** means the person who assists the Commission Administrator on matters
99 related to the Solid and Hazardous Waste Commission.

100
101 (7) **“Commissioner”** means a duly appointed member of the Commission.

- 102 (8) **“Days”** means a calendar day including weekends and holidays.
103
- 104 (9) **“Department”** means the Colorado Department of Public Health and Environment.
105
- 106 (10) **“Division”** means the Hazardous Materials and Waste Management Division and/or the Division of
107 Environmental Health and Sustainability that exist within the Department.
108
- 109 (11) **“Electronic filing”** or **“Electronically filed”** All filings for rulemakings, adjudications, interpretative
110 rules, and penalty reviews shall be made by electronic mail, unless an Exception to Electronic Filing has
111 been granted by the Commission. All deadlines are in the time zone of the Commission’s office located at
112 4300 Cherry Creek Drive South, Denver, CO 80246. Filing by electronic mail shall be complete when the
113 Commission receives, by 11:59 p.m. on the date it is due, an electronic mail containing an attached,
114 signed version of the document to be filed, and a message is transmitted back to the sender from the
115 Commission confirming the filing was received by 11:59 p.m. on the date that the document is due. An
116 electronic document may be “signed” by affixing a signature to the document and scanning and attaching
117 the signature page to the filing. Alternatively, by affixing his or her name to the document, a filer agrees
118 that the document constitutes an electronic transaction pursuant to Section 24-71.3-105, C.R.S. and an
119 electronic signature pursuant to Section 24-71-101, C.R.S. When a party files by electronic mail, it shall
120 be considered an agreement to be served by electronic mail. The filer is responsible for furnishing one or
121 more electronic notification addresses at which the electronic filer agrees to accept service and shall
122 immediately provide the Commission and all parties with any change to the electronic filer’s notification
123 address. If the document is too large to transmit by electronic mail, the filer shall serve the document(s)
124 under an Exception to Electronic Filing.
125
- 126 (12) **“Ex Parte communication”** means an oral or written communication regarding a proceeding where
127 the communication is between a member or members of the Commission and a person who has an
128 interest in the proceeding that (1) takes place after the adoption of a petition to notice a rulemaking or
129 after an appeal for an adjudicatory hearing has been filed; (2) is not on the public record; (3) is not
130 authorized by other specific provision of law or Commission order; and (4) with respect to which
131 reasonable prior notice to all parties is not given.
132
- 133 (13) **“Exception to electronic filing”** Any person who is unable to comply with the requirements of
134 electronic filing may request approval from the Commission to file documents in paper format or an
135 alternative electronic mechanism approved in writing by the Commission Administrator or Commission
136 Assistant. If documents are filed in a paper format, an original and the number of paper copies required
137 for each proceeding as specified by the Commission must be filed with the Commission, Colorado
138 Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246.
139 Filings under the exception to electronic filing shall be submitted by the same deadlines and under the
140 same requirements as electronic filing, defined above.
141
- 142 (14) **“Financial interest”** A person has a financial interest if the person has, directly or indirectly, through
143 business, investment, or family:
144 a. An ownership or investment interest in any entity;
145 b. A compensation arrangement with the organization or with any entity or individual. Compensation
146 includes direct and indirect remuneration as well as gifts or favors that are not insubstantial;
147 c. Employment or prospective employment for which negotiations have begun;
148 d. An ownership interest in real or personal property; or
149 e. A loan or any other debtor interest.
150
- 151 (15) **“Formal hearing”** means a proceeding that is duly noticed at which the Commission takes a formal
152 action in accordance with the requirements of the APA and these procedural rules.

- 153 (16) **“Good cause”** means a valid and sufficient reason, in the opinion of the Hearing Officer or the
154 Commission, to make an exception to a requirement of the Procedural Rules.
155
- 156 (17) **“Hearing Officer”** means a Commissioner selected by the Commission to preside over prehearings,
157 or informal or formal hearings.
158
- 159 (18) **“Informal hearing”** means a proceeding in which interested persons may submit views or otherwise
160 informally participate in conferences on any proposal under consideration by the Commission.
161
- 162 (19) **“Official act”** means any vote, decision, recommendation, approval, disapproval or other action,
163 including inaction, which involves the use of discretionary authority made by the Commission.
164
- 165 (20) **“Party”** means any person, entity, or agency named or admitted as a party in any Commission
166 proceedings subject to these regulations. The Division and any person subject to an order or decision of
167 the Division are parties to an adjudicatory proceeding.
168
- 169 (21) **“Potential conflict of interest”** means an apparent or actual conflict of interest that may come
170 about due to reasonably foreseeable events.
171
- 172 (22) **“Prehearing Procedure”** means the procedure used by the Commission to obtain information for a
173 formal action prior to the hearing. Use of the prehearing procedure is at the sole discretion of the
174 Commission. The prehearing procedure is more particularly described in Section 7.08.
175
- 176 (23) **“Rule”** or **“Regulation”** as used in this Part 7 includes proposed revisions or amendments to
177 existing regulations, alternate proposals, or wholly new regulation text.
178
- 179 (24) **“Rulemaking proceeding”** means a proceeding in which the Commission formulates, amends, or
180 repeals a rule and is subject to the requirements of Section 24-4-103, C.R.S. Rulemaking proceedings
181 are the notice and hearing activities required by law for the Commission to adopt regulations, as
182 authorized by the APA or other specific authority, that are of general applicability and future effect that
183 implement, interpret, or declare law or policy, which are intended to be binding. They include adoption of
184 proposed regulations, or deletion of, or revisions or modifications to, existing regulations of the
185 Commission.
186
- 187 (25) **“Year”** means a calendar year ending on December 31st.
188
189

190 **§ 7.04 Conflicts of Interest**

191

- 192 (1) Application. The provisions of this section shall apply to any and all proceedings requiring or resulting
193 in a formal action by the Commission. Commission members shall not participate in such proceedings if
194 an actual conflict of interest exists in accordance with this section, except as provided below. Whether a
195 potential conflict of interest exists, recusal of a Commissioner is determined by the Commissioner with the
196 potential conflict. The following rule encourages the timely disclosure of potential conflicts of interest and
197 provides guidance on the standards that should be applied for the disqualification of a Commissioner
198 based on a conflict of interest. Neither an actual nor an apparent conflict of interest exists merely from the
199 fact that a Commission member or his/her employer has a pre-established policy position on an issue
200 under consideration.
201
- 202 (2) Disclosure. If a Commissioner perceives that he or she may have a potential conflict of interest, the
203 Commissioner shall disclose the basis of the possible potential conflict of interest to the Commission and

204 others in attendance before the discussion or hearing begins, or as soon thereafter as the Commissioner
205 perceives the possible potential conflict of interest.

206
207 (3) Disqualification. If a member of the Commission perceives that he or she has potential conflict of
208 interest regarding any matter before the Commission, the Commissioner shall disclose the basis of the
209 conflict of interest to the Commission and others in attendance before the discussion or hearing begins or
210 as soon thereafter as the Commissioner perceives there is an actual or apparent conflict of interest and if
211 necessary disqualify himself or herself from any further participation or voting on the matter at hand.

212
213 (4) Notification of Conflicts. Members of the public, parties, the Division, or other Commissioners may
214 bring to the Commission's attention circumstances that they believe constitute a potential conflict of
215 interest for a Commissioner with respect to the proceeding. If a member of the public, a party, the
216 Division, or other Commissioner's believe a potential conflict exists for a Commissioner, such person
217 must inform the Commission prior to the start of any proceeding in which the potential conflict of interest
218 exists. Such disclosure can be made to the Commission Administrator or the Commission Assistant prior
219 to the hearing or at the hearing during the public comment period that occurs prior to any rulemaking for
220 matters not on the agenda. Such person must provide detailed information as to why he/she believes a
221 potential conflict of interest exists. The Commissioner named for such conflict will be provided the
222 opportunity to respond to the information provided and make a determination as to whether recusal is
223 necessary. Recusal will be determined by the Commissioner with the potential conflict.

224
225 (5) Rule of Necessity. The foregoing notwithstanding, if recusal of the Commissioner or Commissioners in
226 question would prevent Commission action because fewer than six Commissioners would be available to
227 participate and vote on the matter at hand, the Commissioner or Commissioners may participate, in spite
228 of an actual or apparent conflict of interest, if they have complied with the disclosure requirements
229 applicable to an actual or apparent conflict of interest prior to acting.

230
231

232 **§ 7.05 Meetings**

233
234 (1) General Meetings. Meetings of the Commission are held quarterly. Meeting dates and hearing
235 schedules are set by the Commission. General meetings are held for the Commission to conduct
236 business, including, without limitation, informal hearings, briefings, reports, budget matters, rulemaking
237 hearings, or adjudicatory hearings.

238
239 (2) Annual Meetings. The annual meeting is held in the 2nd quarter of each year and includes election of
240 the Commission officers.

241
242 (3) Special Meetings. Special meetings may be held to conduct additional business, rulemakings,
243 hearings or other special matters.

244
245 (4) Conduct of Meetings.
246 a. Six Commissioners constitute a quorum.
247 b. The chairperson will preside over the meetings of the Commission. The chairperson or presiding
248 Commissioner will be responsible for the orderly conduct of the meeting. If the chairperson is
249 absent or recused, the vice chair or presiding Commissioner will conduct the meeting.
250 c. The Commission meetings shall be subject to the requirements of the Colorado Open Meetings
251 Law, Sections 24-6-401, *et seq.*, C.R.S.
252 d. The Commission will record the meetings and will prepare a summary of the meetings. The
253 Commission will be provided the summary of the meeting for review and approval. Recordings of
254 the meeting will be available pursuant to the Colorado Open Records Act, Section 24-72-201, *et*
255 *seq.*, C.R.S.

256 e. In the discretion of the Commission, the Commission may, in addition to other business, receive
257 reports from the Division, the Commission Administrator, the Department, the Attorney General,
258 or any other person.

259
260 (5) Public Participation. All Commission meetings are open to the public. The Commission strongly
261 encourages public participation. The chairperson or presiding Commissioner will provide an opportunity
262 for the Commission to accept public comments. At the discretion of the chairperson or presiding
263 Commissioner, the public may be invited to participate at other appropriate times during the meeting.
264 Public participation and comment may be reasonably limited as the chairperson or presiding
265 Commissioner deems necessary. Members of the public appearing before the Commission are expected
266 to present their views in a respectful manner and must refrain from abusive tactics and personal attacks.

267
268 (6) Executive Session. The Commission may, with respect to particular matters approved under the
269 Colorado Open Meetings Law, call for an executive session upon affirmative vote of at least six
270 Commissioners and announcement to the public of the topic for discussion during the executive session,
271 where only the Commission, its counsel, appropriate staff (which includes the Commission Assistant and
272 Commission Administrator and, when appropriate as determined by the Commission, relevant Division
273 personnel), and other pertinent or necessary persons may be present, pursuant to Section 24-6-402(3),
274 C.R.S.

275
276 (7) Notice. Notice of all Commission meetings shall be given in accordance with the provisions of Section
277 25-15-302(9)(b), C.R.S. and as follows:

- 278 a. The Commission shall publish notice of the meetings in the Colorado Register at least 20 days
279 prior to the date of the meeting.
- 280 b. The notice shall state the time, place and nature of the subject matter to be considered at the
281 meeting.
- 282 c. If the Commission determines that a prehearing process is required, the notice shall so specify. If
283 elected, the prehearing process will be in accordance with the prehearing procedures set forth in
284 Section 7.08.
- 285 d. Notice shall be sent to or made electronically available at least 20 days prior to the meeting to
286 persons on the mailing list required by Section 25-15-302(9)(b), C.R.S.
- 287 e. An amended notice with minor changes may be issued by the Commission at any time prior to the
288 hearing without necessitating a continuance of the hearing date, provided the original notice is not
289 substantially altered so that it would prejudice any person who might be interested in the
290 proceedings. Amended notices with minor changes will be available on the Commission's website.
- 291 f. If an amendment is substantial and would be prejudicial, the hearing date shall be continued to an
292 appropriate date as determined by the Commission. Notice thereof shall be made in the same
293 manner as the original notice and must be published in the Colorado Register and on the
294 Commission's website consistent with Colorado statutes.

295
296 (8) Agendas. Agendas for meetings shall be electronically mailed to the Commission members and all
297 persons on the mailing list required by Section 25-15-302(9)(b), C.R.S. or posted on the Commission's
298 website at least five (5) days prior to each meeting.

299
300 (9) Meeting Materials. All meeting materials shall be made available on the Commission's website at least
301 five days prior to the Commission meeting.

302
303
304 **§ 7.06 Hearings**

305
306 (1) Public Hearings. The Commission is authorized to hold public hearings that are conducted in
307 compliance with the APA. Public hearings may include rulemaking hearings pertaining to hazardous or

308 solid waste regulations or other regulations authorized by statute. Public hearings also include
309 adjudicatory hearings, hearings on penalties and compliance orders, and hearings on interpretative rules.
310 Public hearings afford any interested person the opportunity to submit data, views, or arguments orally or
311 in writing. The Commission may designate certain matters for which oral presentations are unnecessary
312 as "Written Comment Only" hearings.

313
314 (2) Informal Hearings. Informal hearings are held in the discretion of the Commission to gather
315 information or receive comment on a matter under preliminary consideration by the Commission or staff.
316 They are typically held during the Commission's general meetings. Informal hearings do not require
317 compliance with the APA and are conducted as deemed appropriate by the Commission. Matters
318 considered at informal hearings do not have binding regulatory or adjudicatory effect.

- 319
- 320 a. Process. Whenever the Commission contemplates rulemaking, public announcement of any
321 informal pre-rulemaking proceedings may be made at such time and in such manner as the
322 Commission or staff determines. The proponent of the contemplated rule will provide information
323 to the Commission on the need for the proposed rulemaking, the details of the proposed
324 rulemaking, and the statutory authority of the proposed rulemaking. Additionally, the Division will
325 inform the Commission about the public process related to the proposed rulemaking. The
326 Division, during the informal hearing, may make a recommendation to the Commission related to
327 the need for a prehearing process to the formal rulemaking hearing. The public will also be invited
328 to submit views or otherwise participate informally in conferences with the Commission or staff on
329 the proposals under consideration. It is in the sole discretion of the Commission to determine if
330 and when such proceedings should occur and whether a rulemaking hearing will include a
331 prehearing process.
 - 332
 - 333 b. Staff: In order to solicit participation in the development of regulatory text prior to submitting a
334 petition for rulemaking to the Commission, the Division may use whatever means are practical
335 and efficient, including public workshops or staff-initiated workgroups. Such workshops or
336 workgroups should be noticed where appropriate and should strive to include the general public.
 - 337
 - 338 c. Work Groups: A work group may be convened by staff at the direction of the Commission for the
339 purpose of producing either a consensus proposal or to develop a core proposal and potential
340 alternatives. Commissioners generally do not participate in workgroups. Public announcement of
341 any workgroup will be provided as deemed appropriate by the Commission or workgroup
342 participants. At the end of any workgroup, any person, including the Division as staff, may
343 proceed with a request for formal action before the Commission at a properly noticed meeting.
 - 344
 - 345 d. Subcommittees. The Commission may convene a subcommittee of Commissioners, and appoint
346 a Commissioner to chair a subcommittee to evaluate any issue that may come before the
347 Commission, including new regulatory requirements or revisions to existing regulations. A
348 subcommittee consists of one or more Commissioners. If more than one Commissioner is on the
349 subcommittee, subcommittee meetings will be noticed pursuant to the Open Meetings Act.
350 Members of the public may participate to assist the Commission, but are not part of the
351 subcommittee. A subcommittee's recommendation is a proposal to generate discussion in an
352 efficient and focused hearing before the full Commission. Commission members of the
353 subcommittee are not committed to the subcommittee's recommendation. Regulation text
354 developed by the subcommittee generally will be proposed and presented in a petition by the
355 Division as staff. Members of the public and the Division may offer alternate proposals to those of
356 the subcommittee. Any subcommittee formed shall exist for one year unless renewed by the
357 Commission.
 - 358

359 (3) Formal Hearings. Formal hearings are held by the Commission for all rulemakings, interpretative
360 rules, administrative penalty reviews and other matters which require an official act of the Commission.
361 Formal hearings proceed in compliance with the APA. Action taken by the Commission during a formal
362 hearing is binding and subject to judicial review. The Commission, in its sole discretion, may elect to use
363 the prehearing procedure described in Section 7.08 for any formal action.

- 364
- 365 a. Rights and obligations of the parties, non-parties, and the Division:
- 366
- 367 I. Parties. Persons granted party status shall have the right to make an individual presentation
368 either orally or in writing, or both, during the formal hearing, to make appropriate objections,
369 and to cross-examine witnesses. Parties to the formal hearing must comply with the
370 prehearing procedures set forth in Section 7.08, if elected by the Commission, including any
371 order of the Commission or the Hearing Officer. Failure to comply with the prehearing
372 procedures or any order may result in loss of party status, as determined by the Commission
373 or the Hearing Officer.
- 374
- 375 II. Non-Parties. Persons who do not desire party status but would like to participate in the formal
376 hearing process may make their views known to the Commission by speaking during the
377 public comment period during the hearing.
- 378
- 379 III. Division. The Division acts as staff to the Commission in any rulemaking hearing and typically
380 is not a formal party. In fulfilling its role as staff, the Division will present evidence, testimony,
381 and background information; respond to questions; and provide any additional information
382 during the hearing requested by the Commission. The Division or the Assistant Attorney
383 General representing the Division may, as necessary to assist the Commission, make
384 objections or cross-examine witnesses, in the discretion of the Commission.
- 385
- 386 b. The Commission shall conduct all formal hearings in accordance with the following provisions:
- 387
- 388 I. Public participation encouraged: The Commission shall hold a public hearing before
389 promulgating any rule or regulation. The Commission encourages the public to participate in
390 rulemaking hearings by commenting on proposed rules or alternate proposals. The
391 Commission will generally afford any person an opportunity to submit data, views or
392 arguments orally at the hearing, but, where appropriate, the Commission may require that
393 such data, views or arguments be submitted in writing in advance of or at the rulemaking
394 hearing as reflected in the notice of proposed rulemaking or by order of the Commission. The
395 Commission will generally set aside a portion of the rulemaking hearing to hear public
396 comment and testimony from those persons who are not a party to the rulemaking. The
397 presiding Commissioner may limit oral testimony at a hearing. Organized groups are urged to
398 identify one spokesperson. Speakers are asked to be as concise as possible and to avoid
399 repeating comments made by others.
- 400
- 401 II. Submission of Written Materials. Members of the public may submit written materials
402 electronically to the Commission before a formal hearing. If members of the public would like
403 the Commission to review written material prior to the hearing, such documents must be
404 electronically filed with the Commission in sufficient time to be included in the meeting
405 materials for the Commission (generally three weeks prior to the noticed hearing), or as
406 otherwise specified in the notice of proposed rulemaking hearing. The Commission may
407 provide parties or the Division an opportunity to rebut oral testimony or documents submitted
408 by the public during a rulemaking hearing and may provide time as reasonably necessary for
409 such rebuttal.
- 410

- 411 III. Order of presentation: If a prehearing process is utilized, the prehearing order issued by the
412 Hearing Officer or the Commission Administrator following the prehearing conference will
413 specify the order of presentations before the Commission and the time allotted for each
414 presentation, rebuttal or closing statements. If a prehearing process is not used, rulemaking
415 hearings generally will involve:
- 416
- 417 A. Opening the Hearing and Disposing of any Procedural Issues. Procedural issues may
418 include prehearing motions, remaining party status issues, late filings, etc.... The
419 Commission at this time should determine whether any potential conflicts of interest exist
420 as described in Section 7.04.
- 421
- 422 B. Presentation by the Division. The Division will make a presentation to the Commission
423 describing the background and basis for the proposed rule. This introductory presentation
424 may, at the discretion of the Commission, be provided by a party proposing the rule
425 instead of the Division.
- 426
- 427 C. Public Comment. The chairman or the presiding Commissioner may specify when and
428 how public comment may be taken during the proceeding.
- 429
- 430 D. Witness presentations. Oaths or affirmations may be required of persons who make
431 statements at rulemaking hearings. The Commission encourages the general public and
432 party witnesses to make plain, brief and simple statements of their positions. Where
433 submittal of written testimony is required prior to the hearing pursuant to the notice of
434 proposed rulemaking or the prehearing order, only an oral summary of that testimony
435 should be provided at the hearing. When not explicitly required, the Commission
436 encourages filing of written testimony prior to the hearing in accordance with the
437 prehearing procedures.
- 438
- 439 E. Cross-examination and Objections. Where the Commission allows participation as a
440 party, a party may make objections, and all witnesses are subject to cross-examination
441 by or on behalf of persons who have party status. In all hearings, witnesses are subject to
442 cross-examination by or on behalf of the Commission, and the Commission may allow its
443 staff and/or legal counsel for the Commission, or Division staff and/or legal counsel for
444 the Division to conduct cross-examination. Any witness whose oral and/or written
445 testimony a party wishes to have as part of the record shall be available for cross-
446 examination at the rulemaking hearing. Where lengthy cross-examination would use
447 undue time, the presiding Commissioner may require each party to estimate the amount
448 of time necessary for cross-examination. To promote an efficient and focused hearing,
449 the presiding Commissioner may limit each party's time for cross-examination.
- 450
- 451 F. Summation of facts and law. The Commission, after the receipt of evidence, may allow or
452 require staff, parties, or other persons to present oral or written summations of the facts
453 and the law, either at the hearing or subsequent thereto, prior to the Commission
454 deliberations.
- 455
- 456 (4) Role of the Division. The Division shall act as staff to the Commission in any informal or formal
457 hearing. In fulfilling its role as staff, the Division may present evidence, provide background information,
458 make proposals or alternate proposals, and summarize evidence and any matters settled before the
459 hearing, make recommendations to the Commission; make objections or cross-examine witnesses, and
460 provide other support as necessary to assist the Commission. The Division may affirmatively request
461 party status in a proceeding before the Commission. If the Division has formally gained party status, it

462 may continue to provide staff services to assist the Commission, as directed by the Commission or the
463 Hearing Officer.

464
465 (5) Other authority. In conducting any rulemaking hearing, the Commission, the presiding Commissioner,
466 or, where appropriate, the Hearing Officer, is authorized to:

- 467 a. administer oaths and affirmations;
- 468 b. sign and issue subpoenas;
- 469 c. regulate the course of the hearing;
- 470 d. set the time and place for continued hearings;
- 471 e. fix the time for filing of documents;
- 472 f. take depositions or have depositions taken;
- 473 g. issue appropriate orders which shall control the subsequent course of the proceedings; and
- 474 h. take any other action authorized by agency rule consistent with CHWA, SWDA, and the APA.

475
476 (6) Continuing hearings. Upon motion by a party for good cause, or by its own motion, the Commission or
477 the Hearing Officer may cancel, or continue any formal hearing to a later date, as deemed necessary and
478 appropriate. For continuances, the new hearing date, time and place may be announced by an amended
479 notice or by a statement at the time and place of the initial noticed hearing. The Hearing Officer may also
480 continue a hearing by order based upon a written request and for good cause, or when the officer deems
481 it appropriate. The hearing will be rescheduled for the next Commission meeting or at the convenience of
482 the Commission. If requested to continue a hearing a second time, the Commission, in its sole discretion,
483 may vacate the hearing and re-notice it for a later date pursuant to Section 7.05(7) and in compliance with
484 Section 24-4-103(4)(d), C.R.S.

485
486 (7) Cancelled hearings. The Commission may cancel any hearing by issuing a notice to that effect on the
487 Commission's website or by announcement at the time and place of the noticed hearing.

488
489

490 **§ 7.07 Formal Actions**

491

492 (1) General.

493

- 494 a. Any brief, response, rebuttal, summary statement or other writing required to be submitted to the
495 Commission shall not exceed 15 pages, 12 point font, and single-spaced. This limitation shall not
496 apply to exhibits submitted to the Commission. If a party to any proceeding needs additional
497 pages, a petition may be made to the Commission with a brief justification.
- 498
499 b. The Commission, in its sole discretion, may elect to use the prehearing procedure described in
500 Section 7.08 for any formal action.

501

502 (2) Interpretive Rules.

503

504 a. Interpretive Rule Request.

505

- 506 I. In the event that an administrative law judge requests an interpretive rule as provided in
507 Section 25-15-308(3)(g), C.R.S., or a district court requests an interpretive rule as provided in
508 Sections 25-15-305(2)(e) and 30-20-113(2.5)(e), C.R.S., the district court or the
509 administrative law judge are to make a request to the Commission.
- 510
511 II. The party requesting the administrative law judge or the district court to obtain an interpretive
512 rule shall pay to the Commission a filing fee in the amount of \$100.00.

- 513 III. If the Commission agrees to issue an interpretive rule, the Commission shall publish notice of
514 the interpretative rulemaking proceeding in accordance with the provisions of Section 24-4-
515 103, C.R.S. within 45 days of receipt of the request.
516
- 517 IV. An interested party may submit an electronic filing with the Commission within 15 days
518 following the date of publication of the notice.
519
- 520 b. Issuance. The Commission shall issue the written interpretive rule within 30 days following the
521 deadline for the receipt of any written material.
522
- 523 c. Legal Effect. The legal effect of any interpretive rule shall be determined in accordance with
524 applicable law.
525
- 526 (3) Administrative Penalty Reviews.
527
- 528 a. Due Process. In order to assure that all parties to any Commission review of the amount of an
529 administrative penalty imposed by the Department are afforded due process of law, the
530 provisions of this section shall be applicable.
531
- 532 b. Commission Review. Pursuant to Section 25-15-308(3)(i), C.R.S., upon request from an
533 aggrieved party the Commission shall review an administrative law judge's determination
534 regarding the amount of an administrative penalty assessed.
535
- 536 c. Scope. The Commission's scope of review is limited to the amount of the penalty assessed and is
537 based solely upon the record of the administrative hearing.
538
- 539 d. Review Requests.
540
- 541 I. An aggrieved party shall make the request for the Commission to review the administrative
542 law judge's determination, in writing. The requesting party shall send the request
543 electronically and by first class mail to the Commission within 30 days of the administrative
544 law judge's decision.
545
- 546 II. The requesting party shall provide the Commission with an electronic version of the written
547 transcript and any exhibits introduced and admitted at the administrative hearing 20 days
548 after submitting the review request to the Commission.
549
- 550 III. Upon receipt of the request, the Commission Administrator or the Commission Assistant shall
551 notify the Commission and the Attorney General representing the Commission. Within 45
552 days of receipt of the request the Commission shall give notice to the public of the
553 administrative penalty review.
554
- 555 IV. Unless the Commission in its discretion is unable to conduct the review within the time frame
556 set forth in this section or the parties to the review mutually agree to an extension, a review of
557 the administrative penalty shall commence within 120 days after receipt of the request.
558
- 559 V. The Commission may request the parties to submit a written brief or summary of their
560 position. The written brief or summary shall be electronically filed with the Commission within
561 30 days from the date of the Commission's request. The requesting party shall also
562 electronically provide a copy of the brief to all other parties to the administrative hearing. The
563 responding party(ies) shall have 14 days from receipt to file a responsive brief with the
564 Commission. The responding party shall also electronically provide the responsive brief to all

565 other parties to the administrative hearing. The requesting party shall have seven days from
566 receipt to file a reply brief. If appropriate, the Commission may request the parties to present
567 an oral summary of and argument for their position during the review.
568

- 569 VI. When reviewing the appropriateness of the administrative penalty amount, the Commission
570 shall consider the following factors based solely upon the factual findings contained in the
571 record:
- 572 A. The seriousness of the violation;
 - 573 B. Whether the violation was intentional, reckless, or negligent;
 - 574 C. The impact upon or the threat to the public health or the environment as a result of the
575 violation;
 - 576 D. The degree, if any, of recalcitrance or recidivism upon the part of the violator;
 - 577 E. The economic benefit realized by the violator as a result of the violation;
 - 578 F. The voluntary and complete disclosure by the violator of such violation in a timely fashion
579 after discovery and prior to the department's knowledge of the violation, provided that all
580 reports required pursuant to state environmental law have been submitted as and when
581 otherwise required;
 - 582 G. Full and prompt cooperation by the violator following disclosure of a violation, including,
583 when appropriate, entering into in good faith and implementing a legally enforceable
584 agreement to undertake compliance and remedial efforts;
 - 585 H. The existence of a regularized and comprehensive environmental compliance program or
586 an environmental audit program that was adopted in a timely and good faith manner and
587 that includes sufficient measures to identify and prevent future noncompliance; and
588 I. Any other aggravating or mitigating circumstances.

- 589 e. Decision. The Commission may issue its decision at the time of the review of the written
590 materials. The written decision shall set forth the basis of the Commission's decision.
591 Alternatively, the Commission may request a hearing, at the Commission's sole discretion, to
592 hear testimony on any issue the Commission deems necessary. If a hearing is requested, notice
593 shall be provided pursuant to 25-15-302(9)(b) and these procedural rules. The Commission will
594 issue a written decision within sixty (60) days after the hearing date, unless an alternative
595 timeframe is determined by the Commission.
596
597

598 (4) Rulemakings.

- 599
- 600 a. General. The Division or any member of the public may petition the Commission in writing to
601 issue, amend, or repeal a rule. Such petition is open to public inspection and must fulfill the
602 requirements of paragraph (d) of this subsection. Action on such a petition is within the discretion
603 of the Commission; but, when the Commission undertakes rulemaking on any matter, all related
604 petitions for the issuance, amendment or repeal of rules on such matter will be considered and
605 acted upon in the same proceeding. The Commission, in its sole discretion, may elect to use the
606 prehearing procedure described in Section 7.08 for any formal action.
607
 - 608 b. Rule Proposals by Members of the Public. Persons interested in proposing regulation text to the
609 Commission are encouraged to contact other interested persons, the Division, and other relevant
610 regulatory entities in developing the draft regulation text. Appropriate Division staff can be
611 reached by contacting the Commission Administrator or the Commission Assistant. Any person
612 can request the Commission to announce and convene a work group or a subcommittee pursuant
613 to Section 7.06(2), action upon which is in the discretion of the Commission. Failure to solicit and
614 consider the positions of others may result in rulemakings having to be postponed, re-noticed, or
615 vacated.
616

- 617 c. Rule Proposals by the Commission or Staff. Prior to notice of a formal rulemaking, the
618 Commission, in its sole discretion, may elect to hold an informal hearing on the pre-proposed
619 rulemaking to solicit participation in the proposed rulemaking. If the Commission elects to hold an
620 informal hearing, the procedures of Section 7.06(2) shall apply.
621
- 622 d. Petitions for Rulemaking. Except for emergency rules addressed in paragraph (5) of this section,
623 the complete petition must be filed by electronic filing, unless granted an exception to electronic
624 filing. Complete petitions must be filed by 11:59 p.m. 30 days prior to the scheduled meeting of
625 the Commission at which the petitioner desires to have the Commission hear the petition.
626 Complete petitions must also be delivered by that time to the Assistant Attorneys General
627 representing the Commission and the Division, and to the Director of the Division. Failure to
628 comply with this requirement will generally result in the petition not being considered during the
629 desired meeting of the Commission. In limited circumstances, the Commission may grant a
630 petitioner's request to have a late petition heard upon showing of good cause.
631
- 632 I. Contents of a Petition. Petitioners are advised to contact the Commission Administrator or the
633 Commission Assistant when preparing their petition to discuss whether the petition is
634 complete and addresses all requirements. The Commission may return any incomplete
635 petition with a brief explanation of how the petition is deficient. A complete petition for
636 rulemaking must include the following information:
637
- 638 II. Petition Cover Sheet. Petitioners shall provide a cover sheet that identifies the person(s)
639 requesting the rulemaking (including the representative's name, address, electronic mail
640 address, and telephone numbers) and includes: (a) a statement describing the nature of the
641 request and the need for the regulation; (b) a statement broadly summarizing the issue to be
642 addressed by the petition; (c) a statement summarizing what, if any, policy, factual, and legal
643 issues arise due to the proposal; (d) a statement summarizing any other person(s) or
644 party(ies) included in the drafting and development of the proposed rulemaking; (e) includes
645 a statement of the Commission's authority to promulgate the rule, citing specific relevant
646 sections of CHWA, SWDA, or other relevant statute; and (f) a brief narrative statement
647 identifying what elements are not specifically required by provisions of the federal Resource
648 Conservation and Recovery Act or are otherwise more stringent than the requirements of the
649 Resource Conservation and Recovery Act, if applicable.
650
- 651 III. Proposed Regulation Text: Petitioners must also provide the Commission with the precise
652 language of any proposed new regulations or amendments to existing regulations. Proposed
653 regulations or amendments to existing regulations must be presented in a form that the
654 Commission can view in context, (i.e., track changes/redline or strikeout with small caps if
655 track changes is not available), and the petitioner must precisely identify the sections of the
656 Commission's regulations that are affected by the proposed change.
657
- 658 IV. Range of Regulatory Alternatives: The Petitioner shall also provide a statement describing
659 the range of regulatory options available to the Commission, including a no-action alternative.
660 The statement should discuss those regulatory options that reasonably flow from or relate to
661 the petitioner's proposal and relevant existing regulation(s).
662
- 663 V. Statement Regarding Federal Requirements: For any provision that is not required by federal
664 statute or regulations, the Petitioner shall provide a brief statement that identifies whether the
665 proposed rule is more stringent than the federal statute. This statement regarding federal
666 requirements may also be used in the notice of rulemaking, and in the final Statement of
667 Basis and Purpose.

- 668 VI. Draft Statement of Basis, Specific Statutory Authority, and Purpose: The Petitioner shall also
669 provide a draft statement of the proposed rule's basis, statutory authority, and purpose, which
670 explains the Commission's rationale for adopting a proposed rule or amendment. The
671 statement must contain:
- 672 A. A general statement of the basis for the rules;
 - 673 B. The specific purposes of the rule (e.g., "to implement the provisions regarding ..., by
674 requiring that" is a way to frame this required discussion);
 - 675 C. The specific statutory section(s) authorizing the rulemaking;
 - 676 D. The Commission's authority to adopt the rulemaking; and
 - 677 E. For any rule or amendment which involves technological or scientific issues, an
678 evaluation of the scientific or technological rationale justifying the proposal.
- 679
- 680 VII. Other Information. Where appropriate, a statement providing any other concise background
681 material that would help the public and the Commission to understand the impact of the
682 proposed rule.
- 683
- 684 VIII. Incorporation by Reference. A petitioner who seeks to incorporate any material by reference
685 must comply with Section 24-4-103(12.5)(a)-(c), C.R.S. The petitioner must also provide one
686 complete copy of any material to be incorporated by reference to the Commission. If the
687 Commission adopts the rule with the incorporated by reference materials, the Commission
688 will forward the incorporated material to the state publications depository and distribution
689 center.
- 690
- 691 e. Regulatory Analysis. Upon a written request filed with the Commission at least 15 days prior to
692 the hearing on a proposed rule, the Commission, or its staff, shall prepare a regulatory analysis of
693 the proposed rule pursuant to Section 24-4-103(4.5), C.R.S. The analysis will address the topics
694 reflected in Section 24-4-103(4.5)(a)(I) - (VI), C.R.S., will include quantification of the data to the
695 extent practicable, and will take account of both short-term and long-term consequences. The
696 regulatory analysis will be available for inspection in the office of the Commission at least five
697 days prior to the hearing on the proposed rulemaking and made available on the Commission's
698 website. Note: the petitioner for a proposed rule is encouraged to supply information with the
699 petition or prehearing statement which could provide the basis for a regulatory analysis.
 - 700
 - 701 f. Discovery. The Commission or the Hearing Officer may on their own motion, or upon the motion
702 of staff, or any interested person or a party for good cause, take depositions or have depositions
703 taken. Other forms of discovery may be allowed by the Commission or the Hearing Officer on
704 their own motion, or where staff, any person or a party is granted leave to conduct such discovery
705 for good cause.
 - 706
 - 707 g. Motions. Prehearing motions are to be filed with the Commission through electronic filing. Copies
708 are to be provided to the parties, the Division, the Assistant Attorneys General representing the
709 Commission and the Division, and to any other person as required by the notice of proposed
710 rulemaking. The Commission or the Hearing Officer may require that parties, the Division, or
711 other persons electronically file in advance of the hearing, all motions or requests for rulings that
712 they intend to make with respect to the proposed rulemaking. Filings that must be made prior to
713 the hearing include motions regarding procedures, the scope and nature of the proceedings, or
714 any other matter that requires a determination prior to final agency action based on the record, or
715 any matter that may reasonably be disposed of prior to receiving testimony or other evidence.
 - 716
 - 717 h. Subpoenas. The Commission or the Hearing Officer shall issue subpoenas, without
718 discrimination, to public and private persons or parties. A subpoena shall be served in the same
719 manner as a subpoena issued by a district court. Upon failure of any witness to comply with such

720 subpoena, the proponent of the subpoena may petition the Commission to use its authorities
721 provided in Section 24-4-103(14), C.R.S.
722

- 723 i. Ex parte Communications. Ex parte communications are permissible if agreeable to the
724 Commissioner(s) involved, but such communication must be disclosed to the Commission as a
725 whole and such information, if to be considered or relied upon in final decision-making, will be
726 made part of the record by the Commission. Once the rulemaking record is closed, new
727 information will only be presented to the entire Commission upon approval of a request to reopen
728 the Commission record. Ex parte communication with individual Commissioners should not occur
729 subsequent to the close of the rulemaking record and before the Commission takes final action. If
730 ex parte communications do occur in that time frame, that fact will be disclosed to the full
731 Commission, and the Commission may reopen the record to allow the parties, the Division, and
732 the public an opportunity to respond to the substance of the ex parte communication.
733
- 734 j. Alternate proposals. Alternate proposals may be submitted at the same time that the petition is to
735 be considered. Persons who submit an alternate proposal for consideration while the Commission
736 is considering a petition for rulemaking and who intend that the alternate proposal be considered
737 with the original petition must comply with the electronic filing requirements and the requirements
738 of Section 7.07(4)(d). If a regulatory analysis and/or cost benefit analysis was completed by the
739 proponent, the proponent of the alternate proposal is also required to provide a regulatory
740 analysis and/or cost benefit analysis based on the alternate proposal. Submission of an alternate
741 proposal will not change the procedural process for any prehearing or hearing, unless otherwise
742 determined by the Commission or Hearing Officer.
743
- 744 k. Prehearing Procedures. Unless the Commission determines that the use of prehearing
745 procedures would substantially facilitate the rulemaking process, no prehearing process,
746 conference or statement is required. If the Commission determines that a prehearing process is
747 required, the notice of proposed rulemaking shall so specify and the procedures set forth in
748 Section 7.08 are applicable.
749

750 (5) Emergency Rules.

- 751 a. The Commission may adopt temporary or emergency rules in accordance with the requirements
752 of Sections 24-4-103(6) and (8)(d), C.R.S. without complying with the procedural requirements
753 above. The Commission may adopt such a rule if it finds on the record that immediate adoption of
754 the rule is:
755 I. Imperatively necessary to comply with a state or federal law or federal regulation, or
756 II. Imperatively necessary for the preservation of public health, safety or welfare; and,
757 III. Compliance with the rulemaking procedural requirements of this regulation (excluding this
758 subsection) would be contrary to the public interest.
759
- 760 b. Unless the immediacy of the situation precludes any preparation, the person requesting a
761 temporary or emergency rule shall prepare at least a brief petition that describes the issue at
762 hand, provides the proposed rule text (i.e., track changes/redline or strikeout with small caps if
763 track changes is not available), includes a statement of the reasons for the action (i.e., the need
764 for the emergency action), and includes proposed findings of the basis for the Commission's
765 action under paragraph (a) of this subsection. This petition should be filed with the Commission
766 Administrator at the earliest possible date. The Commission will endeavor to provide notice of the
767 proposed emergency rule, as practicable.
768
- 769 c. The required findings in paragraph (a) of this subsection and a statement of the reasons for the
770 action will be published with any temporary or emergency rule adopted by the Commission. A
771

772 temporary or emergency rule is effective upon adoption or on such later date as is stated in the
773 rule, will be published promptly, and will remain in effect for not more than 120 days or less from
774 the date of adoption, unless it is made permanent in accordance with the APA.
775

776
777 **§ 7.08 Prehearing Procedure.**
778

779 (1). These prehearing procedures provide a process by which issues related to a proposed rule are raised
780 and discussed. It is the strong desire of the Commission that the parties and the Division resolve as
781 many issues as possible by negotiation prior to the hearing. The Hearing Officer or the Commission,
782 at its sole discretion, may amend the prehearing process through an order issued by the Hearing
783 Officer or the Commission.
784

785 a. Selection and Authority of the Hearing Officer. The Commission Administrator requests that a
786 Commissioner volunteer to serve as the Hearing Officer for the prehearing process and the
787 rulemaking hearing. If no Commissioner volunteers, the Commission Administrator will appoint a
788 Hearing Officer. The Hearing Officer may limit the number of pages in a prehearing statement or
789 use the procedures set forth in Section 7.07(1)(a) and may limit the number of witnesses and
790 exhibits. The Hearing Officer may limit the amount of time for direct and cross-examination of the
791 witnesses, make any other decisions regarding the conduct of the hearing, and make any
792 recommendations to the Commission regarding the hearing.
793

794 b. Rights and Obligations of Parties, Non-parties, and the Division.
795

796 I. Parties. Persons granted party status have the right to submit a prehearing statement,
797 motions, response and rebuttal statements, expert testimony, alternate proposals or other
798 documentation as permitted in these procedural rules and by the Commission or Hearing
799 Officer.
800

801 II. Non-parties: Persons who do not desire party status but would like to participate in the
802 rulemaking process may make their views known to the Commission on any rulemaking by
803 submitting comments in writing in advance of the hearing or presenting oral testimony during
804 the hearing at the time the Commission designates for public comment.
805

806 III. Division: In fulfilling its role as staff, the Division may present or submit evidence and
807 testimony, provide background, summarize evidence and any matters settled before the
808 hearing, make recommendations to the Commission and perform other duties as requested
809 by the Commission. The Division or the Assistant Attorney General representing the Division
810 may, as necessary to assist the Commission, make objections or cross-examine witnesses,
811 in the discretion of the Commission. The Division, at its discretion, may affirmatively request
812 party status pursuant to the procedure in this section. If the Division formally gains party
813 status it may continue to provide staff services to assist the Commission, as directed by the
814 Commission or the Hearing Officer. Whether the Division participates as staff, as a party, or
815 both, it shall comply with the prehearing procedures.
816

817 c. Gaining Party Status. The requirements for gaining party status to any particular rulemaking
818 typically are specified in the notice for that rulemaking. In order to be granted party status, the
819 petitioner must comply with the requirements of this subsection. Where the notice of rulemaking
820 specifies that a petition for party status is required, the petition shall be electronically filed and
821 must: (a) identify the applicant; (b) provide the name, address, electronic mail address, and
822 telephone of the applicant or applicant's representative; and (c) briefly summarize what, if any,
823 policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the

824 application. Electronically mailed copies must also be timely received by the Assistant Attorneys
825 General representing the Commission and the Division. As may be modified by any notice for a
826 rulemaking, the following will have party status in rulemaking proceedings before the
827 Commission:

- 828
- 829 I. The Petitioner. Any person petitioning for rulemaking shall automatically be granted party
830 status.
- 831
- 832 II. The Proponent of an Alternate Proposal. Any person who proposes an alternative to a
833 proposed rule or revision shall comply with the filing requirements of this section and provide
834 an alternate rule or revision and any other documents in accordance with Section 7.07(4)(j) or
835 any other provision of these procedural rules. The required documents must be filed by the
836 date specified in the notice for party status requests and not less than 20 days prior to the
837 rulemaking hearing.
- 838
- 839 III. Any Other Person. Any person may seek party status by petitioning the Commission. The
840 petition to the Commission shall include a brief summary that includes the reason in which
841 the person is requesting party status. Granting of party status under this section is in the sole
842 discretion of the Commission. The petition must be filed with the Commission as specified in
843 the notice of rulemaking by electronic filing, and if not specified in the notice then no later
844 than 20 days before the rulemaking hearing. If granted an exception to electronic filing, the
845 requestor must complete filing for party status by submitting an original and three copies of
846 the petition with the Commission by the date specified in the notice.
- 847
- 848 IV. Late Party Status. The Commission may grant party status requests submitted fewer than 20
849 days before the hearing on a particular rulemaking only upon written request and for good
850 cause. Action on such request is at the discretion of the Commission or the Hearing Officer.
851 Any such request must be filed with the Commission at the earliest possible opportunity, and
852 must also be received by each party of record, the Division staff person identified in the
853 notice, and the Assistant Attorneys General representing the Division and the Commission.
854 Persons seeking party status by the act of proposing an alternative rule are subject to the
855 time requirements provided in the notice or that are provided in Section 7.07(4)(j).
- 856
- 857 d. Status Conference. The Hearing Officer may require one or more status conferences with the
858 Division and the parties to a rulemaking hearing. The Commission may, in the notice of
859 rulemaking, make attending the status conference mandatory. Status conferences will typically be
860 held prior to the prehearing conference, shortly after the close of the deadline for party status.
861 The Hearing Officer will preside at the status conference. The goal of the status conference is to
862 ascertain and discuss the issues involved in the rulemaking, and to ensure that the Division and
863 the parties are making all necessary efforts to discuss and resolve all possible issues prior to the
864 date that prehearing statements are due. The Hearing Officer may impose appropriate sanctions
865 on any party that fails to attend a mandatory status conference. These sanctions may include
866 limits on the issues that may be raised at the hearing, or the denial of party status.
- 867
- 868 e. Prehearing Conference. The Hearing Officer will set the date of the prehearing conference unless
869 the date is specified in the notice of proposed rulemaking. The goals of the prehearing
870 conference may include: the identification of stipulations; the identification of contested matters
871 and issues to be raised at the hearing; the disposal of motions; the identification of witnesses and
872 exhibits to be presented by the parties, the Division, and other persons (where applicable); and,
873 the formulation of a prehearing order for the rulemaking proceeding. A prehearing order shall be
874 prepared at the direction of the Hearing Officer based upon the prehearing conference. The order
875 shall reflect any rulings made by the Hearing Officer with respect to procedures to be followed at

876 the hearing, or any other matter. The order will specify the order of presentations and the time
877 allotted for such presentations. The Hearing Officer may make any necessary or appropriate
878 procedural rulings. Any party may appeal such rulings to the Commission by electronically filing a
879 written appeal with the Commission (with copies provided simultaneously to all parties, the
880 Division, and the Assistant Attorneys General representing the Division and the Commission) no
881 later than seven working days prior to the hearing. The Hearing Officer may also make procedural
882 decisions outside the prehearing conference, reflected in an order, e.g., requiring attendance at
883 status conferences, requiring written briefs on particular legal or factual issues, requiring
884 intermediate informational presentations, or segmenting the rulemaking hearings for the benefit of
885 the Commission.

886
887 I. Participation mandatory. If the Commission determines that a prehearing conference is
888 necessary, the Commission will specify when a prehearing conference will be held pursuant
889 to paragraph (v) of this section. Any such conference shall be held not less than ten days in
890 advance of the hearing, unless the Commission specifies otherwise. All parties and the
891 Division shall participate in the prehearing conference in person. A party may submit, in
892 writing, a request to not participate in the hearing in person. For good cause, the Hearing
893 Officer may grant the request. Failure to comply with the requirements of this section may
894 result in denial of a party status, dismissal of a party or limits on the issues that may be raised
895 at the hearing.

896
897 f. Prehearing Statements. Unless provided otherwise in the notice of proposed rulemaking, at the
898 time and place stated in the notice for the prehearing conference, the Division and every
899 interested person who intends to testify at the hearing and offer exhibits into the records of the
900 hearing shall exchange copies of a prehearing statement and shall submit electronic filings of
901 their prehearing statement to the Commission Administrator, who shall distribute them to the
902 Commissioners, the Assistant Attorneys General for the Commission and the Division, and the
903 parties. It is the intent of the Commission that final positions on the issues in a rulemaking
904 (including final alternate proposals) will be reflected in the prehearing statements for the
905 prehearing conference, so that all necessary discussions and revisions to positions will take place
906 before the prehearing statements are due. If it is apparent that the final positions of the parties
907 and the Division are not reflected in the prehearing statements, i.e., if further discussions,
908 revisions to positions, or alternate proposals are warranted at the time of the prehearing
909 conference, the Hearing Officer may decide to continue the rulemaking hearing. The prehearing
910 statement must contain:

911
912 I. A cover document that summarizes, in layperson's terms, the Division's or the party's general
913 position and the contents of the prehearing statement. The cover document must also
914 summarize any voluminous exhibits and provide a reasonable estimate of the time necessary
915 for presentation at the hearing;

916
917 II. A prehearing statement that explains the factual and legal issues that arise from the
918 rulemaking proposal, and the position being taken on each issue. Briefs discussing legal
919 issues are encouraged, and may be required by the Hearing Officer;

920
921 III. A list of the issues to be resolved by the Commission during the hearing;

922
923 IV. Copies of all exhibits to be introduced at the hearing;

924
925 V. A list of witnesses who will testify and a brief description of their testimony, including where
926 applicable, the exhibits they will discuss or rely upon. Any witnesses not listed in the

- 927 prehearing statement will be prohibited from testifying unless the Hearing Officer approves
928 the witness upon a request and for good cause;
929
- 930 VI. All written testimony to be offered into evidence at the hearing. (Note: the Commission
931 encourages, and in some instances may require, witness testimony to be provided in writing);
932
- 933 VII. Any alternate proposal to the proposed rule in the format specified in Section 7.07(4)(j),
934 above; and
935
- 936 VIII. Procedural or evidentiary issues and motions to be resolved.
937
- 938 g. Response Statements. Each party shall be afforded the opportunity to provide a response to
939 prehearing statements filed by the proponent, the Division or any other party. Response
940 statements are due 14 days following the filing of the prehearing statement or at such other date
941 and time as set by the Hearing Officer. Response statements may also include identification of
942 witnesses, testimony and exhibits.
943
- 944 h. Rebuttal Statements. The Hearing Officer through written order may allow for rebuttal statements
945 by the proponent of the proposed rule to be filed electronically with the Commission within seven
946 working days after the response statements are filed with the Commission. Written rebuttal
947 statements may include identification of rebuttal witnesses, rebuttal testimony, and rebuttal
948 exhibits. Rebuttal statements are limited to topics raised in the response statements of the
949 proponent, the parties or the Division, and are not to raise new issues or arguments. New issues
950 and arguments raised in rebuttal statements will not be addressed by the Commission. The
951 rebuttal statement must be delivered by electronic mail to each party, to the Assistant Attorneys
952 General for the Commission and Division, and to the Division staff person for the proceeding by
953 11:59 p.m. of that same day.
954
- 955 i. Additional Conferences. Where scheduling allows and it appears that an additional conference
956 would be useful, the Hearing Officer may schedule an additional status conference prior to the
957 hearing.
958
- 959 j. Alternate Proposals Offered After the Prehearing Conference. Except as provided in this
960 subsection, the Hearing Officer will not accept an alternate proposal by a party after the
961 prehearing conference. However, the parties are encouraged to develop consensus positions and
962 to narrow the issues in contention based upon discussions during or after the prehearing
963 conference and prior to a final Commission action in the proceeding provided the Commission
964 and the parties have a reasonable opportunity to evaluate such alternate proposals. The
965 Commission or the Hearing Officer may grant leave to submit such alternate proposed rule text
966 for good cause shown. In granting or denying such leave, the Commission or the Hearing Officer
967 will consider the timing of the proposal and the hearing, the complexity of the issues, and whether
968 the parties and the Division are or expect to be in agreement on such alternate proposed rule
969 text.
970

971 **§ 7.09 Final Commission Action and Post-Hearing Procedures.**

972

973 (1). In adopting any rule the Commission shall consider all submissions. The rules promulgated shall be
974 based on the record, which shall consist of proposed rules, any alternate proposals, testimony, evidence,
975 exhibits, prehearing submittals, and other matters presented or considered, matters officially noticed,
976 rulings on exceptions, any proposed findings of fact and conclusions of law, and any written comments or
977 briefs filed.

- 978 (2). Deliberations of the Commission are open to the public, and do not constitute part of the rulemaking
979 record. The rules or regulations will be consistent with the subject matter as set forth in the notice of
980 proposed rulemaking.
981
- 982 (3). The Commission may designate a subcommittee of Commissioners to assist with deliberations. If the
983 Commission will deliberate at some time other than immediately after the close of the record for that
984 particular hearing, appropriate notice will be given to the parties and to any other person requesting such
985 notice.
986
- 987 (4). If a rule approved by the Commission during a rulemaking hearing differs substantially from the
988 original noticed proposal or any alternate proposals, the Commission may, at the request of any person,
989 or party, or on its own motion, make the proposed final rule available for additional comment prior to
990 taking final action.
991
- 992 (5). After consideration of the relevant matter presented, the Commission shall adopt simultaneously with
993 the rules or revision a statement of basis, specific statutory authority, and purpose pursuant to Section
994 24-4-103(4)(c), C.R.S.
995
- 996 (6). The rules, as finally adopted, shall be consistent with the requirements of Section 24-4-103(4)(c),
997 C.R.S.
998
- 999 (7). The Commission shall maintain an official formal rulemaking record for each proposed rule for which
1000 a notice of proposed formal rulemaking has been published in the Colorado register. The formal
1001 rulemaking record shall be in accordance with the requirements of Section 24-4-103(8.1), C.R.S.
1002
- 1003 (8). Within 180 days after the last public hearing on the proposed rule, the Commission shall adopt a rule
1004 pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect
1005 in the Colorado Register.
1006
- 1007 (9). Except as provided in Section 7.07(5) of this rule, a rule shall become effective 20 days after
1008 publication of the rule as finally adopted, as provided in Section 24-4-103(11), C.R.S. or on such later
1009 date as is stated in the rule. Once the rule becomes effective, the formal rule-making process shall be
1010 deemed to have become a final agency action for judicial review purposes.
1011
- 1012 (10). Pursuant to Section 25-15-305(1)(a), C.R.S., a final rule issued by the Commission is subject to
1013 judicial review in accordance with the requirements of Sections 25-15-301 *et seq.* and article 4 of Section
1014 24, C.R.S. except that, any judicial review of a rule shall be filed in the district court for the Second
1015 Judicial District pursuant to 25-15-305(1)(b), C.R.S.
1016
- 1017 (11). All rules promulgated by the Commission must be submitted to the Attorney General for review in
1018 accordance with Sections 24-4-103(8)(b) and (12), C.R.S.
1019
- 1020 (12). Each rule adopted by the Commission, together with the Attorney General's opinion, shall be filed in
1021 accordance with Sections 24-4-103(11)(d) and (12), C.R.S.
1022
- 1023 (13). All rules adopted or amended by the Commission shall be submitted to the office of legislative legal
1024 services in accordance with the provisions of Section 24-4-103(8)(d), C.R.S.
1025
- 1026 (14). The Commission shall maintain a copy of the current regulations and make them available in
1027 accordance with the provisions of 24-4-103(9), C.R.S.
1028
1029

1030 **§ 7.10 Basis and Purpose**

1031
1032 These amendments to the 6 CCR 1007-3, Part 7 procedural rules are made pursuant to the authority
1033 granted to the Solid and Hazardous Waste Commission in Section 25-15-302(7)(b), C.R.S.

1034
1035 The fundamental purpose of these rules is to establish procedural rules by which the Solid and
1036 Hazardous Waste Commission ("Commission") shall conduct its meetings, formal rulemaking, reviews of
1037 administrative penalties and informal hearings. The rules also set forth any prehearing proceedings and
1038 procedures that the Commission may impose. The rules are intended to assure that such procedures and
1039 hearings before the Commission are fair and impartial, comply with the requirements of the Colorado
1040 Administrative Procedures Act, Sections 24-4-101, *et seq.*, C.R.S., the Colorado Hazardous Waste Act,
1041 Sections 25-15-301, *et seq.*, C.R.S. ("CHWA"), and the Solid Waste Disposal Sites and Facilities Act,
1042 Sections 30-20-101 *et seq.* ("SWDA"), and to foster substantive discussion on the issues and minimize
1043 burdensome procedures.

1044
1045 The original basis for these regulations was the passage of Senate Bill 116, during the 1991-1992
1046 legislative sessions. CHWA created the Hazardous Waste Commission and authorized it to promulgate
1047 rules for the operation of the Commission and hearings and proceedings before the Commission. CHWA
1048 also authorized the Commission to be the promulgating and adopting entity for hazardous waste
1049 regulations in the state, a duty previously performed by the Colorado State Board of Health, to issue
1050 interpretive rules and to review the amounts of administrative penalties affirmed by an administrative law
1051 judge.

1052
1053 These rules were first amended on September 21, 1993 to correct typographical errors and inadvertent
1054 omissions. In 2006, as a result of Senate Bill 06-171, the Hazardous Waste Commission was renamed
1055 the Solid and Hazardous Waste Commission and assumed rulemaking responsibilities from the State
1056 Board of Health over solid waste. The SWDA authorized the Commission to be the promulgating and
1057 adopting entity for solid waste regulations in the state. These Part 7 rules were amended on May 17,
1058 2011 to reflect this name change.

1059
1060 The 2015 amendments are intended to incorporate better prehearing processes, define potential,
1061 apparent and actual conflicts of interests required for disclosure by Commissioners, as well as clarify the
1062 informal hearing and formal rulemaking processes.

1063
1064 These rules are based on specific requirements set forth in Sections 25-15-301, *et seq.*, C.R.S., and the
1065 requirements set forth in Sections 30-20-101 *et seq.*, C.R.S., and the requirements of the Administrative
1066 Procedures Act, Sections 24-4-101, *et seq.*, C.R.S.

1067 **2) Section 8.85 {Statement of Basis and Purpose for the Rulemaking Hearing of**
1068 **November 17, 2015} is added to Part 8 of the Regulations to read as follows:**

1069
1070 **Statement of Basis and Purpose**
1071 **Rulemaking Hearing of November 17, 2015**

1072
1073 **8.85 Basis and Purpose.**

1074
1075 These amendments to 6 CCR 1007-3, Part 7 are made pursuant to the authority granted to the Solid and
1076 Hazardous Waste Commission in Section 25-15-302(7)(b), C.R.S.

1077
1078 **Deletion and Replacement of Existing Part 7 Regulations (Procedural Rules of the Hazardous**
1079 **Waste Commission) with New Part 7 Regulations (Procedural Rules of the Solid and Hazardous**
1080 **Waste Commission)**

1081
1082 The fundamental purpose of these rules is to establish procedural rules by which the Solid and
1083 Hazardous Waste Commission ("Commission") shall conduct its meetings, formal rulemaking, reviews of
1084 administrative penalties and informal hearings. The rules also set forth any prehearing proceedings and
1085 procedures that the Commission may impose. The rules are intended to assure that such procedures and
1086 hearings before the Commission are fair and impartial, comply with the requirements of the Colorado
1087 Administrative Procedures Act, Sections 24-4-101, *et seq.*, C.R.S., the Colorado Hazardous Waste Act,
1088 Sections 25-15-301, *et seq.*, C.R.S. ("CHWA"), and the Solid Waste Disposal Sites and Facilities Act,
1089 Sections 30-20-101 *et seq.* ("SWDA"), and to foster substantive discussion on the issues and minimize
1090 burdensome procedures.

1091
1092 The original basis for these regulations was the passage of Senate Bill 116, during the 1991-1992
1093 legislative sessions. CHWA created the Hazardous Waste Commission and authorized it to promulgate
1094 rules for the operation of the Commission and hearings and proceedings before the Commission. CHWA
1095 also authorized the Commission to be the promulgating and adopting entity for hazardous waste
1096 regulations in the state, a duty previously performed by the Colorado State Board of Health, to issue
1097 interpretive rules and to review the amounts of administrative penalties affirmed by an administrative law
1098 judge.

1099
1100 These rules were first amended on September 21, 1993 to correct typographical errors and inadvertent
1101 omissions. In 2006, as a result of Senate Bill 06-171, the Hazardous Waste Commission was renamed
1102 the Solid and Hazardous Waste Commission and assumed rulemaking responsibilities from the State
1103 Board of Health over solid waste. The SWDA authorized the Commission to be the promulgating and
1104 adopting entity for solid waste regulations in the state. These Part 7 rules were amended on May 17,
1105 2011 to reflect this name change.

1106
1107 The 2015 amendments are intended to incorporate better prehearing processes, define potential,
1108 apparent and actual conflicts of interests required for disclosure by Commissioners, as well as clarify the
1109 informal hearing and formal rulemaking processes.

1110
1111 These rules are based on specific requirements set forth in Sections 25-15-301, *et seq.*, C.R.S., and the
1112 requirements set forth in Sections 30-20-101 *et seq.*, C.R.S., and the requirements of the Administrative
1113 Procedures Act, Sections 24-4-101, *et seq.*, C.R.S.