
Colorado Hazardous Waste Regulations

Part 7

Procedural Rules for the Hazardous Waste Commission

(Amended 5/17/11, effective 6/30/11)

To obtain more information regarding the
Colorado Hazardous Waste Regulations,
please contact the Hazardous Materials and
Waste Management Division at 303-692-3300.

PART 7 PROCEDURAL RULES FOR THE SOLID AND HAZARDOUS WASTE COMMISSION

§ 7.01 Authority.

Authority for the Solid and Hazardous Waste Commission to promulgate these rules is found at section 25-15-302(7)(b), C.R.S. These rules are intended to be consistent with the requirements of the State Administrative Procedure Act, section 24-4-101 et seq., C.R.S., and section 25-15-301, et seq., C.R.S. Where there is a conflict between the requirements of the State Administrative Procedure Act and section 25-15-301, et seq., C.R.S. the provisions of section 25-15-301, et seq., C.R.S. shall prevail.

§ 7.02 Scope and Purpose.

(a) These rules shall govern all procedures and hearings before the Solid and Hazardous Waste Commission and are intended to assure that such procedures and hearings are fair and impartial as required by section 25-15-302(7)(b), C.R.S.

(b) Except as necessary to comply with the applicable statutes, the requirements of these rules may be waived whenever the Commission determines for good cause shown that strict adherence to the rules is not in the best interests of fairness or impartiality.

(c) It is the intent of the Solid and Hazardous Waste Commission to conduct its duties and responsibilities in a way which fosters substantive discussion on the issues and minimizes burdensome procedures which impede the Commission's substantive work.

§ 7.03 Definitions.

For purposes of this part, the following definitions shall apply:

(a) "**Business**" means any corporation, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(b) "**Commission**" means the Solid and Hazardous Waste Commission created pursuant to section 25-15-302, C.R.S.

(c) "**Commissioner**" means a duly appointed member of the Solid and Hazardous Waste Commission.

(d) "**Commission Administrator**" means the individual holding the position created by section 25-15-302(9)(a), C.R.S.

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(e) "**Conflict of interest**" means an official act of a Commissioner which may have a direct economic benefit on a business or other undertaking in which the Commissioner has a direct or substantial financial interest. A conflict of interest may also exist in circumstances where the Commissioner has a personal interest that makes it impossible for the Commissioner to participate objectively in an official act.

(f) "**Department**" means the Department of Health.

(g) "**Division**" means the Hazardous Materials and Waste Management Division.

(h) "**Economic benefit**" means a payment, service or thing of value that the Commissioner expects to be provided or that is provided and could have been reasonably foreseen as a consequence of the Commissioner's action or inaction.

(i) "**Financial interest**" means a substantial interest held by an individual which is:

- (1) an ownership interest in a business;
- (2) a creditor interest in a solvent business;
- (3) an employment or a prospective employment for which negotiations have begun;
- (4) an ownership interest in real or personal property;
- (5) a loan or any other debtor interest; or
- (6) a directorship or officership in a business.

(j) "**Formal rule-making**" means a proceeding in which the Commission formulates, amends or repeals a rule and is subject to the requirements of section 24-4-103, C.R.S.

(k) "**Hearing Chair**" means a Commissioner selected by the Commission to preside over any formal rule-making.

(l) "**Informal proceeding**" means a proceeding in which interested persons may submit views or otherwise informally participate in conferences on any proposal under consideration by the Commission.

(m) "**Official act**" means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

(n) "**Other undertaking**" includes such relationships as counsel, consultant or representative of a business.

§ 7.04 Conflicts of Interest.

(a) In deciding whether there is a conflict of interest, a Commissioner or the Commission shall consider the definitions of a conflict of interest, the following, and any other relevant information:

- (1) the legislature's intent and decision to appoint a Commission comprised of individuals with expertise and involvement with waste management in the State of Colorado.
- (2) the interest disclosed by the Commissioner; and
- (3) whether the interest impedes the Commissioner's independence of judgment.

(b) A conflict does not exist merely from the fact that a Commissioner, a Commissioner's employer or a Commissioner's client has a pre-established policy position regarding an issue being considered by the Commission.

(c) A Commissioner shall take one of the following steps if the Commissioner perceives a conflict of interest:

- (1) Disclose the basis of the potential conflict of interest to the Commission and others in attendance before the discussion or hearing begins or as soon thereafter as the conflict of interest is perceived, and disqualify him or herself from any further participation or voting on the matter at hand; or
- (2) Disclose the basis of the potential conflict of interest to the Commission and others in attendance before the discussion or hearing begins or as soon thereafter as the conflict of interest is perceived. If the Commissioner does not disqualify him or herself from further participation on the matter, the Chair will ask for comments from any Commissioners, parties to the matter before the Commission, or any member of the public present. Except for the member disclosing the potential conflict of interest, the Commission shall vote on whether a conflict of interest exists, and the Commissioner disclosing the potential conflict shall be bound by the Commission's vote. If a conflict is found to exist, the Commissioner disclosing the conflict shall be disqualified from further participation or voting on the matter at hand.

(d) A conflict of interest may also be raised by other Commissioners, the parties to the matter before the Commission and any member of the public.

§ 7.05 Business Meetings.

(a) The Commission shall hold regularly scheduled meetings for the conduct of its business, and notice of the meetings shall be given in accordance with the provisions of section 25-15-302 (9)(b), C.R.S. and as follows:

- (1) The Commission Administrator shall publish notice of the meetings in the Colorado Register at least twenty days prior to the date of the meeting;
- (2) The notice shall state the time, place and nature of the subject matter to be considered at the meeting;
- (3) Notice shall be sent at least twenty days prior to the meeting to persons on the mailing list required by section 25-15-302(9)(b), C.R.S.
- (4) Agendas for meetings shall be mailed to the Commission members and all persons on the mailing list required by section 25-15-302(9)(b), C.R.S.. at least five (5) days prior to each meeting.
- (5) The Commission meetings shall be open to the public and subject to the requirements of the Open Meetings law, section 24-6-401 et seq., C.R.S. Any portion of the proceedings that are open to the public shall be recorded and the recordings shall be available to the public except if the Public Records Act, section 24-72-201, et seq., C.R.S., or any other federal or state law, permits the nondisclosure of certain information.
- (6) Meetings ordinarily proceed under Robert's Rules of Order-Revised, but the Commission may from time to time act on a more informal basis unless a Commissioner requests that Robert's Rules of Order-Revised be utilized.
- (7) In the discretion of the Commission, the Commission may, in addition to other business, receive reports from the Division, the Administrator, the Department, the Attorney General, or any other person.

(b) The Department shall furnish personnel to the Commission as the Commission reasonably requires to the extent that resources allow.

§ 7.06 Formal Rule-making Procedures.

(a) Any adoption of a rule pursuant to the powers granted to the Commission shall be in accordance with the requirements of sections 24-4-103 and 24-4-103.5, C.R.S. The Commission shall determine whether a rule-making proceeding shall be conducted as a formal proceeding. Any person or entity desiring to participate in a formal rule-making proceeding must so notify the Commission in writing. Upon good cause shown, the Commission may waive the deadline.

(b)(1) Any interested person shall have the right to petition the Commission for the issuance, amendment or repeal of a rule. The petition shall be open to public inspection and any action on the petition shall be within the discretion of the Commission. If the Commission undertakes formal rule-making on any matter, all related petitions for the issuance, amendment or repeal of rules on the matter shall be considered and acted upon in the same proceeding as required by section 24-4-103, C.R.S.

(2) Petitions for formal rule-making shall include the following information:

- (i) Identification of the persons requesting rule-making and the nature of the requests;
- (ii) The language of the proposed rule;
- (iii) A statement of the Commission's authority to promulgate the rule;
- (iv) A concise general statement of the rule's basis and purpose. If the rule involves technological or scientific issues, the statement shall include an evaluation of the scientific or technological rationale justifying the proposed rule; and
- (v) Any information which the petitioner wishes to be available to the Commission for the preparation of a regulatory analysis of the proposed rule.

(c) Notice.

- (1) The Commission shall provide notice of any proposed formal rule-making as required by sections 24-4-103 and 24-4-103.5, C.R.S., except that the Commission may lengthen the notice period upon request or when otherwise appropriate, to provide sufficient time for public review of a proposed rule. The notice shall state that party status is required and shall specify the time by which party status notification is required.
- (2) In addition to the notice requirements set forth in subsection (1) of this section, the Commission shall provide notice to all parties on the mailing list pursuant to 25-15-302(9)(b), C.R.S.
- (3) Pursuant to section 25-15-302(8)(a), C.R.S., the notice shall include a summary or the text of each proposed rule or rule revision and, if the Commission deems appropriate, a reference to a Federal Register notice in the published notice.
- (4) An amended notice may be issued by the Commission at any time prior to the hearing without necessitating a continuance of the hearing date, provided the original notice is not substantially altered to the prejudice of any interested person. If an amendment is substantial and prejudicial, the hearing date shall be continued to an appropriate date as determined by the Commission, and notice thereof shall be made in accordance with sections 24-4-103, and 24-4-103.5, C.R.S.

(d) Regulatory Analysis.

Upon written request by any person, at least fifteen days prior to the hearing, the Commission shall issue a regulatory analysis of the proposed formal rule in accordance with section 24-4-103(4.5), C.R.S.

(e) Incorporation by Reference.

The Commission may incorporate by reference in its rules, without publishing the incorporated material in full, the information set forth in and in accordance with section 24-4-103 (12.5), C.R.S.

(f) Conduct of Hearing.

- (1) The hearing ordinarily proceeds under Robert's Rules of Order-Revised, but the Commission may from time to time act on a more informal basis, but in no event shall the hearing fail to comply with title 24, article 4 of the Colorado Revised Statutes. A Commissioner may request that Robert's Rules of Order-Revised be utilized.
- (2) At the time the Commission approves the notice of proposed rule-making, or at anytime thereafter, it shall select a Hearing Chair.
- (3) The Commission shall hold a public hearing in accordance with section 24-4-103, C.R.S. at which it shall afford any interested persons an opportunity to submit written data, views, or arguments. The Commission requests that written materials be single-spaced and double-sided. The Commission may allow oral testimony and may set limits on the length of the oral testimony.
- (4) The Commission shall have the authority to exercise any and all powers set forth in subsection (4) of this section and these rules during a formal-rule-making proceeding.
- (5) The Commission shall have the authority on its own motion or upon the motion of any interested person for good cause shown to:
 - (i) Administer oaths and affirmations;
 - (ii) Sign and issue subpoenas;
 - (iii) Regulate the course of the hearing;
 - (iv) Set the time and place for continued hearings;
 - (v) Set the time for the filing of appropriate documents;

(vi) Take depositions or have depositions taken;

(vii) Issue appropriate orders which shall control the subsequent course of the proceedings;
and

(viii) Take any other action authorized by Commission rule consistent with section 24-4-103, C.R.S.

(6) The Commission shall make every reasonable effort to provide for and solicit public input into the formal rule-making proceeding.

(7) The Commission may request the Division to provide information on any topic or issue at any time during the rule-making proceedings. The Commission shall have the right to ask questions of any person presenting evidence or testimony, whether written or oral.

(8) The Division shall act as staff to the Commission in all rule-making proceedings, and as such shall participate in any manner deemed appropriate by the Commission to the extent that resources allow.

(9) Any interested person may submit views orally or in writing on the proposals under consideration or otherwise participate informally in the Commission proceedings.

(g) Final Commission Action.

(1) In adopting any rule the Commission shall consider all submissions. The rules promulgated shall be based on the record, which shall consist of proposed rules, testimony, evidence, exhibits, and other matters presented or considered.

(2) The rules, as finally adopted, shall be consistent with the requirements of section 24-4-103(4)(c), C.R.S.

(3) The Commission shall maintain an official formal rule-making record for each proposed rule for which a notice of proposed formal rule-making has been published in the Colorado register. The formal rule-making record shall be in accordance with the requirements of section 24-4-103(8.1)(a).

(4) Within one hundred eighty days after the last public hearing on the proposed rule, the Commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Colorado Register.

(5) Except as provided in § 7.08 of this part, a rule shall become effective twenty days after publication of the rule as finally adopted, as provided in section 24-4-103(11), C.R.S. or on such later date as is stated in the rule. Once the rule becomes effective, the formal rule-making process shall be deemed to have become a final agency action for judicial review purposes.

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(6) Pursuant to section 25-15-305(1)(a), C.R.S., a final rule issued by the Commission is subject to judicial review in accordance with the requirements of 24-4-105, C.R.S. except that, any judicial review of a rule shall be filed in the district court for the second judicial district.

(7) All rules promulgated by the Commission must be submitted to the attorney general for review in accordance with sections 24-4-103(8)(b) and (12), C.R.S.

(8) Each rule adopted by the Commission, together with the attorney general's opinion, shall be filed in accordance with section 24-4-103, (11)(d) and (12), C.R.S.

(9) All rules adopted or amended by the Commission shall be submitted to the office of legislative legal services in accordance with the provisions of section 24-4-103(8)(d), C.R.S.

(10) The Commission shall maintain a copy of the current regulations and make them available in accordance with the provisions of 24-4-103(9), C.R.S.

§ 7.07 Pre-hearing Procedures

(a) Unless the Commission determines that the use of pre-hearing procedures would substantially facilitate the rule-making process, no pre-hearing conference or statement is required. If the Commission determines that a pre-hearing conference or statement is required, the notice of proposed rule-making shall so specify.

(b) Pre-hearing Conference.

(1) A pre-hearing conference shall be held not less than 10 days in advance of the hearing, unless the Hearing Chair for good cause specifies otherwise.

(2) The object of the pre-hearing conference may include the formulation of stipulations or orders respecting the issues to be raised, and witnesses and exhibits to be presented by interested persons or the Division. The interested persons and the Division should make known at the pre-hearing conference any objections to the procedures or evidence that may be raised at the hearing. Stipulations may be made at the pre-hearing conference to reflect any matters which have been agreed to or admitted by the interested persons and the Division. A pre-hearing order, based on the conference, shall be prepared and shall reflect any rulings made by the Hearing Chair with respect to the procedures to be followed at the hearing or any other matter, and shall include an allotment of the time provided for the hearing between the Division and interested persons who participated in the pre-hearing conference, and members of the public wishing to comment at the rule-making hearing.

(3) Whenever adequate time is available, the Hearing Chair shall provide a reasonable period of time following the pre-hearing conference for the submission of written rebuttal statements, including testimony and exhibits. Written materials should be single-spaced and double-sided.

(c) Pre-hearing Statement.

(1) Unless provided otherwise in the notice of proposed rule-making, at the time and place stated in the notice for the pre-hearing conference, the Division and every interested person who intends to testify at the hearing and offer exhibits into the records of the hearing shall exchange copies of a pre-hearing statement and shall submit the original and 13 copies of their pre-hearing statement to the Commission Administrator, who shall distribute them to the Commissioners, the Assistant Attorney General, and the Director of the Hazardous Materials and Waste Management Division.

(2) A pre-hearing statement shall contain the following:

(i) A specific statement of the factual and legal claims asserted or a list of the issues to be resolved;

(ii) Copies of all exhibits to be introduced at the hearing. Where the nature of an exhibit is such that providing copies would be unduly burdensome, the pre-hearing statement shall describe the exhibit and indicate that the exhibit shall be available for inspection at a specified location prior to the hearing. Any such exhibit shall also be available for inspection at the pre-hearing conference and at the hearing and shall become part of the record of the hearing;

(iii) A list of witnesses who will testify and a brief description of their testimony;

(iv) Any alternative proposal to the proposed rule. The submission of a proposed statement of basis and purpose is required and submission of a regulatory analysis is encouraged;

(v) All written testimony to be offered into evidence at the hearing; and

(vi) Procedural or evidentiary issues and motions to be resolved.

(d) Hearing Chair --Additional Authority.

(1) The Hearing Chair may limit the number of pages in a pre-hearing statement for items (c)

(2) (i), (iii) and (iv), and may limit the number of witnesses and exhibits.

(2) The Hearing Chair may limit the amount of time for direct and cross-examination of the witnesses, make any other decisions regarding the conduct of the hearing, and make any recommendations to the Commission regarding the hearing.

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(3) **Motions.** The Hearing Chair may require that, as part of the pre-hearing conference or otherwise, interested persons submit in advance of the hearing all motions or requests for rulings that such person intends to make with respect to the proposed rule-making, except where, due to lack of material information, such motions or requests cannot reasonably be submitted in advance of the hearing.

(4) **Subpoenas.** The Hearing Chair may issue subpoenas if deemed appropriate and for good cause. Subpoenas shall be issued without discrimination between public and private persons by the Hearing Chair. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the Commission may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and service of the subpoena. In such an event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence under penalty of punishment for contempt in case of willful failure to comply with the order of the court.

§ 7.08 Temporary or Emergency Rules.

The Commission may adopt temporary or emergency rules in accordance with the requirements of section 24-4-103(6) and (8)(d), C.R.S.

§ 7.09 Informal Proceedings.

(a) If the Commission determines that an informal proceeding would be beneficial, the Commission shall publish notice of the proceeding in the Colorado Register at least twenty days prior to the date of such meeting and shall state the time, place and issues to be discussed.

(b) The Commission Administrator shall maintain a mailing list of persons requesting to be included thereon and shall mail notice of the meeting at least twenty days prior to the meeting.

(c) Any interested person may submit views orally or in writing on the proposals under consideration or otherwise participate informally in the commission proceeding.

(d) In the discretion of the Commission and in the interest of participation of all interested persons and time, the Commission may limit the length of time allotted for a participant's presentation or testimony and the length of any written submission.

(e) Nothing in this section shall be construed to require published notice of any meetings of subcommittees, task forces, or advisory councils of the Commission, by what ever name known.

§ 7.10 Interpretive Rules.

(a) Interpretive Rule Request.

(1) In the event that an administrative law judge requests an interpretive rule as provided in section 25-15-308(3) or a district court requests an interpretive rule as provided in section 25-15-305(2)(e), pursuant to section 25-15-308(3)(g), C.R.S., the district court or the administrative law judge are to make a request to the Commission Administrator.

(2) The party requesting the administrative law judge or the district court to obtain an interpretive rule shall pay to the Commission a filing fee in the amount of \$100.

(b) Notice.

(1) If the Commission agrees to issue an interpretive rule, the Commission Administrator shall publish notice of the rule-making proceeding in accordance with the provisions of section 24-4-103, C.R.S. within forty-five days of receipt of the request.

(2) An interested party may submit written material within fifteen days following the date of publication of the notice. The written materials shall not exceed fifteen pages in length, single-spaced and double-sided.

(c) The Commission shall issue the written interpretive rule within thirty days following the deadline for the receipt of any written material.

(d) The legal effect of any interpretive rule shall be determined in accordance with applicable law and is not presumed to be binding on any party to the appeal.

§ 7.11 Administrative Penalty Reviews.

(a) In order to assure that all parties to any Commission review of the amount of an administrative penalty imposed by the Department are afforded due process of law, the provisions of this section shall be applicable.

(b) Pursuant to section 25-15-308(3)(i), C.R.S., upon request from an aggrieved party the Commission shall review an administrative law judge's determination regarding the amount of an administrative penalty assessed.

(c) The Commission's scope of review is limited to the amount of the penalty assessed and is based solely upon the record of the administrative hearing.

(d) Review Requests.

(1) An aggrieved party shall make the request for the Commission to review the administrative law judge's determination, in writing, on a form provided by the Commission. The requesting party shall send the request by first class mail to the Commission Administrator within 30 days of the administrative law judge's decision.

(2) The requesting party shall provide the Commission with 13 copies of the written transcription of the administrative hearing and any exhibits introduced and admitted at the administrative hearing 20 days after submitting the review request to the Commission.

(3) Upon receipt of the request, the Commission Administrator shall notify all Commission members in writing of the request and within forty-five days of receipt of the request shall give notice to the public of the administrative penalty review in accordance with the provisions of section 24-4-103, C.R.S.

(4) Unless the parties to the review mutually agree to an extension or the Commission in its discretion is unable to conduct the review within the time frame set forth in this section, a review of the administrative penalty shall commence within 120 days after receipt of the request.

(5) The Commission may request the parties to submit a written brief or summary of their position. The written brief or summary shall be single-spaced and double-sided. The written brief or summary shall be filed with the Commission within 30 days from the date that the requesting party submitted the review request. The requesting party shall also mail by first class mail a copy of the brief to all other parties to the administrative hearing. The responding party(ies) shall have fifteen days to file a responsive brief. The requesting party shall have 5 days to file a reply brief. If appropriate, the Commission may request the parties to present an oral summary of and argument for their position during the review.

(6) When reviewing the appropriateness of the administrative penalty amount, the Commission shall consider the following factors based solely upon the factual findings contained in the record:

- (i) The seriousness of the violation;
- (ii) Whether the violation was intentional, reckless, or negligent;
- (iii) The impact upon or the threat to the public health or the environment as a result of the violation;
- (iv) The degree, if any, of recalcitrance or recidivism upon the part of the violator;
- (v) The economic benefit realized by the violator as a result of the violation;

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- (vi) The voluntary and complete disclosure by the violator of such violation in a timely fashion after discovery and prior to the department's knowledge of the violation, provided that all reports required pursuant to state environmental law have been submitted as and when otherwise required;
 - (vii) Full and prompt cooperation by the violator following disclosure of a violation, including, when appropriate, entering into in good faith and implementing a legally enforceable agreement to undertake compliance and remedial efforts; and
 - (viii) The existence of a regularized and comprehensive environmental compliance program or an environmental audit program that was adopted in a timely and good faith manner and that includes sufficient measures to identify and prevent future noncompliance; and
 - (ix) Any other aggravating or mitigating circumstances.
- (7) The Commission may issue its decision at the time of the review. The written decision shall set forth the basis of the Commission's decision.

§ 7.12 Purpose.

The fundamental purpose of these rules is to establish procedural rules by which the Solid and Hazardous Waste Commission ("Commission") shall conduct its meetings, formal rule-making, reviews of administrative penalties and informal proceedings. The rules also set forth any pre-hearing proceedings and procedures that the Commission may impose. These rules are promulgated pursuant to section 25-15-302(7)(b), C.R.S. The rules are intended to assure that such procedures and hearings before the Commission are fair and impartial, comply with the requirements of the Colorado Administrative Procedures Act, section 24-4-101 et seq., C.R.S., and 25-15-301, et seq. C.R.S., and to foster substantive discussion on the issues and minimize burdensome procedures.

§ 7.13 Basis.

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

These rules are based on specific requirements set forth in section 25-15-301, et seq. C.R.S. and the requirements of the Administrative Procedures Act, section 24-4-101, et seq. C.R.S.

These rules were amended on September 21, 1993 to correct typographical errors and inadvertent omissions.

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. These Part 7 rules were amended on May 17, 2011 to reflect this name change.