

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Amendments to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2 Part 1) – Amendment of § 1.9.2 to change “Informal Conference” to “Compliance Conference”

(Adopted by the Solid and Hazardous Waste Commission on August 18, 2009)

Basis and Purpose

This amendment to 6 CCR 1007-2, Section 1.9.2 is made pursuant the authority granted to the Solid and Hazardous Commission in Sections 25-15-302(4.5) and 30-20-109, C.R.S.

This amendment revises section 1.9.2 to replace references to “Informal Conference” with references to “Compliance Conference”. The reason for this change is that the term “Informal Conference” refers to a meeting that is in the informal part of the Hazardous Materials and Waste Management Division’s (the “Division’s”) enforcement process, but is not “informal” in terms of how the meeting is conducted. This has resulted in some confusion to the regulated community.

When the Division issues a Compliance Advisory to a facility for violations discovered during an inspection, the facility may request an Informal Conference. If the Division intends to assess a penalty for the violations, the Division strongly encourages the facility to come in for an Informal Conference, although doing so is entirely optional.

The Informal Conference is an opportunity for facility representatives to present information to the Division regarding the violations discovered during the inspection of its facility. Examples of some topics typically discussed during the Informal Conference include:

- correction of erroneous or incomplete information supplied to the inspector;
- evidence or regulatory interpretations arguing that conditions observed by the inspector do not constitute violations; and
- information regarding progress made by the facility to correct the noted violations.

The Informal Conference is also an opportunity for the Division to inform facility representatives of any revisions to the Compliance Advisory that it may be considering. This might include, for example, adding violations to those already included in the Compliance Advisory, sampling results if any, or subsequent determinations that items noted in the Compliance Advisory are not violations. If a compliance schedule is not noted in the Compliance Advisory, the Division may also work with the facility during the Informal Conference to finalize a schedule to correct any noted violations not already corrected.

The agenda for these meetings is to review each violation, listen to the facility's response to the violation (they may agree that the violation occurred, but differ as to the number of counts; or they may be able to present information that the alleged violation did not occur; etc.), and then learn from the facility what actions they have undertaken to return to compliance. In addition, the Division will inform the facility of its plans for any formal enforcement that may be necessary.

Just as the Compliance Advisory and inspection report are part of the Division's administrative record of enforcement activities against a facility, the information supplied during the Informal Conference is also considered a part of the administrative record. In order to preserve information exchanged during the Informal Conference for the record, these meetings are recorded. The Division is also typically represented at the Informal Conference by the Colorado Attorney General's office. While the Division encourages facilities to bring legal representation to the Informal Conferences, most times the facilities do not. These factors add an additional level of formality to the Informal Conference.

This amendment to change the term "Informal Conference" to "Compliance Conference" has no other effect than to make the term more accurate as to the post-inspection process that it is describing and much less confusing for the regulated community.