

Colorado Hazardous Waste Regulations

Part 7

Procedural Rules for the Solid and Hazardous Waste Commission

(amended 02/16/16, effective 03/30/16)

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



COLORADO
Department of Public
Health & Environment

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

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

§ 7.01 Introduction

- (1) The Colorado Solid and Hazardous Waste Commission (Commission) is authorized by the General Assembly to oversee Colorado’s hazardous waste management program pursuant to the Colorado Hazardous Waste Act, Section 25-15-101, *et seq.*, C.R.S. (CHWA) and the solid waste management program pursuant to the Colorado Solid Waste Disposal Sites and Facilities Act, Section 30-20-101, *et seq.*, C.R.S. (SWDA).
- (2) The primary role of the Commission is to adopt regulations that implement the hazardous waste and solid waste management programs to minimize waste, develop safe alternative methods for the treatment of waste and protect the health of Colorado’s citizens and visitors and its resources.
- (3) The Commission is composed of nine citizen members appointed by the Governor and confirmed by the Colorado State Senate. The membership is divided to represent three groups: regulated industry, academia and the public at large.
- (4) The activities of the Commission are open to the public, with the exception of those instances in which the Commission is permitted by law to meet in executive session pursuant to the Open Meetings Law, Section 24-6-401, *et seq.*, C.R.S. The Commission encourages public participation to its fullest extent. The Commission’s Procedural Rules are intended to promote open, fair and effective proceedings with the input, participation and consideration of the general public. Persons appearing before the Commission are encouraged to make well-planned presentations that use clear, concise, common sense language to explain their points of view and can assist the Commissioners in making informed decisions.

§ 7.02 Authority, Scope, and Purpose

- (1) Authority for the Commission to promulgate these procedural rules is found at Section 25-15-302(7)(b), C.R.S. These rules are intended to implement and be consistent with the requirements of the State Administrative Procedure Act, Sections 24-4-101, *et seq.*, (APA) as amended, CHWA, Sections 25-15-301, *et seq.*, C.R.S., and SWDA Sections 30-20-101, *et seq.*, C.R.S. Where there is a conflict between the requirements of the APA, CHWA and the SWDA, the provisions of CHWA, Sections 25-15-301, *et seq.*, C.R.S. shall prevail.
- (2) These procedural rules shall govern all procedures and hearings before the 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.
- (3) Except as necessary to comply with the applicable statutes, the requirements of these rules may be waived whenever the Commission determines that strict adherence to these rules is not in the best interests of fairness, impartiality, or an efficient proceeding before the Commission. A party to any proceeding before the Commission who, during the proceeding, fails to raise an objection regarding lack of compliance with any procedural requirement of these regulations waives that issue for the purpose of judicial review.

(4) It is the intent of the Commission to conduct its duties and responsibilities in a manner 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 7, the following definitions shall apply:

- (1) **“Actual conflict of interest”** means an inability of a Commissioner to objectively participate in the matter before the Commission because the Commissioner has an unalterably closed mind on a matter critical to the disposition of the proceeding. An official act that affects a group of industries or businesses does not, in and of itself, constitute an actual conflict of interest even though the Commissioner may work for or otherwise have an interest in one of the industries or businesses impacted.
- (2) **“Alternate proposal”** means any new substantive proposed rule text offered for the Commission's consideration and approval, including wholly new regulation text, or amendments or revisions to previously proposed regulation text. Proposed text that simply deletes, clarifies or elaborates on elements of an already-submitted proposal, without substantive new obligations or requirements is not an alternate proposal.
- (3) **“Apparent conflict of interest”** means a personal or financial interest which could reasonably be perceived as an interest that may influence the Commissioner's decision.
- (4) **“Commission”** means the Solid and Hazardous Waste Commission.
- (5) **“Commission Administrator”** means the individual holding the position created by Section 25-15-302(9)(a), C.R.S.
- (6) **“Commission Assistant”** means the person who assists the Commission Administrator on matters related to the Solid and Hazardous Waste Commission.
- (7) **“Commissioner”** means a duly appointed member of the Commission.
- (8) **“Days”** means a calendar day including weekends and holidays.
- (9) **“Department”** means the Colorado Department of Public Health and Environment.
- (10) **“Division”** means the Hazardous Materials and Waste Management Division and/or the Division of Environmental Health and Sustainability that exist within the Department.
- (11) **“Electronic filing”** or **“Electronically filed”** All filings for rulemakings, adjudications, interpretative rules, and penalty reviews shall be made by electronic mail, unless an Exception to Electronic Filing has been granted by the Commission. All deadlines are in the time zone of the Commission's office located at 4300 Cherry Creek Drive South, Denver, CO 80246. Filing by electronic mail shall be complete when the Commission receives, by 11:59 p.m. on the date it is due, an electronic mail containing an attached, signed version of the document to be filed, and a message is transmitted back to the sender from the Commission confirming the filing was received.

by 11:59 p.m. on the date that the document is due. An electronic document may be “signed” by affixing a signature to the document and scanning and attaching the signature page to the filing. Alternatively, by affixing his or her name to the document, a filer agrees that the document constitutes an electronic transaction pursuant to Section 24-71.3-105, C.R.S. and an electronic signature pursuant to Section 24-71-101, C.R.S. When a party files by electronic mail, it shall be considered an agreement to be served by electronic mail. The filer is responsible for furnishing one or more electronic notification addresses at which the electronic filer agrees to accept service and shall immediately provide the Commission and all parties with any change to the electronic filer’s notification address. If the document is too large to transmit by electronic mail, the filer shall serve the document(s) under an Exception to Electronic Filing.

(12) **“Ex Parte communication”** means an oral or written communication regarding a proceeding where the communication is between a member or members of the Commission and a person who has an interest in the proceeding that (1) takes place after the adoption of a petition to notice a rulemaking or after an appeal for an adjudicatory hearing has been filed; (2) is not on the public record; (3) is not authorized by other specific provision of law or Commission order; and (4) with respect to which reasonable prior notice to all parties is not given.

(13) **“Exception to electronic filing”** Any person who is unable to comply with the requirements of electronic filing may request approval from the Commission to file documents in paper format or an alternative electronic mechanism approved in writing by the Commission Administrator or Commission Assistant. If documents are filed in a paper format, an original and the number of paper copies required for each proceeding as specified by the Commission must be filed with the Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246. Filings under the exception to electronic filing shall be submitted by the same deadlines and under the same requirements as electronic filing, defined above.

(14) **“Financial interest”** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity;
- b. A compensation arrangement with the organization or with any entity or individual. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial;
- c. Employment or prospective employment for which negotiations have begun;
- d. An ownership interest in real or personal property; or
- e. A loan or any other debtor interest.

(15) **“Formal hearing”** means a proceeding that is duly noticed at which the Commission takes a formal action in accordance with the requirements of the APA and these procedural rules.

(16) **“Good cause”** means a valid and sufficient reason, in the opinion of the Hearing Officer or the Commission, to make an exception to a requirement of the Procedural Rules.

(17) **“Hearing Officer”** means a Commissioner selected by the Commission to preside over prehearings, or informal or formal hearings.

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

- (19) **“Official act”** means any vote, decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority made by the Commission.
- (20) **“Party”** means any person, entity, or agency named or admitted as a party in any Commission proceedings subject to these regulations. The Division and any person subject to an order or decision of the Division are parties to an adjudicatory proceeding.
- (21) **“Potential conflict of interest”** means an apparent or actual conflict of interest that may come about due to reasonably foreseeable events.
- (22) **“Prehearing Procedure”** means the procedure used by the Commission to obtain information for a formal action prior to the hearing. Use of the prehearing procedure is at the sole discretion of the Commission. The prehearing procedure is more particularly described in Section 7.08.
- (23) **“Rule”** or **“Regulation”** as used in this Part 7 includes proposed revisions or amendments to existing regulations, alternate proposals, or wholly new regulation text.
- (24) **“Rulemaking proceeding”** 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. Rulemaking proceedings are the notice and hearing activities required by law for the Commission to adopt regulations, as authorized by the APA or other specific authority, that are of general applicability and future effect that implement, interpret, or declare law or policy, which are intended to be binding. They include adoption of proposed regulations, or deletion of, or revisions or modifications to, existing regulations of the Commission.
- (25) **“Year”** means a calendar year ending on December 31st.

§ 7.04 Conflicts of Interest

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

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

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

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

§ 7.05 Meetings

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

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

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

(4) Conduct of Meetings.

- a. Six Commissioners constitute a quorum.
- b. The chairperson will preside over the meetings of the Commission. The chairperson or presiding Commissioner will be responsible for the orderly conduct of the meeting. If the chairperson is absent or recused, the vice chair or presiding Commissioner will conduct the meeting.
- c. The Commission meetings shall be subject to the requirements of the Colorado Open Meetings Law, Sections 24-6-401, *et seq.*, C.R.S.

- d. The Commission will record the meetings and will prepare a summary of the meetings. The Commission will be provided the summary of the meeting for review and approval. Recordings of the meeting will be available pursuant to the Colorado Open Records Act, Section 24-72-201, *et seq.*, C.R.S.
- e. In the discretion of the Commission, the Commission may, in addition to other business, receive reports from the Division, the Commission Administrator, the Department, the Attorney General, or any other person.

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

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

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

- a. The Commission shall publish notice of the meetings in the Colorado Register at least 20 days prior to the date of the meeting.
- b. The notice shall state the time, place and nature of the subject matter to be considered at the meeting.
- c. If the Commission determines that a prehearing process is required, the notice shall so specify. If elected, the prehearing process will be in accordance with the prehearing procedures set forth in Section 7.08.
- d. Notice shall be sent to or made electronically available at least 20 days prior to the meeting to persons on the mailing list required by Section 25-15-302(9)(b), C.R.S.
- e. An amended notice with minor changes 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 so that it would prejudice any person who might be interested in the proceedings. Amended notices with minor changes will be available on the Commission's website.
- f. If an amendment is substantial and would be prejudicial, the hearing date shall be continued to an appropriate date as determined by the Commission. Notice thereof shall be made in the same manner as the original notice and must be published in the Colorado Register and on the Commission's website consistent with Colorado statutes.

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

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

§ 7.06 Hearings

(1) Public Hearings. The Commission is authorized to hold public hearings that are conducted in compliance with the APA. Public hearings may include rulemaking hearings pertaining to hazardous or solid waste regulations or other regulations authorized by statute. Public hearings also include adjudicatory hearings, hearings on penalties and compliance orders, and hearings on interpretative rules. Public hearings afford any interested person the opportunity to submit data, views, or arguments orally or in writing. The Commission may designate certain matters for which oral presentations are unnecessary as "Written Comment Only" hearings.

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

- a. Process. Whenever the Commission contemplates rulemaking, public announcement of any informal pre-rulemaking proceedings may be made at such time and in such manner as the Commission or staff determines. The proponent of the contemplated rule will provide information to the Commission on the need for the proposed rulemaking, the details of the proposed rulemaking, and the statutory authority of the proposed rulemaking. Additionally, the Division will inform the Commission about the public process related to the proposed rulemaking. The Division, during the informal hearing, may make a recommendation to the Commission related to the need for a prehearing process to the formal rulemaking hearing. The public will also be invited to submit views or otherwise participate informally in conferences with the Commission or staff on the proposals under consideration. It is in the sole discretion of the Commission to determine if and when such proceedings should occur and whether a rulemaking hearing will include a prehearing process.
- b. Staff: In order to solicit participation in the development of regulatory text prior to submitting a petition for rulemaking to the Commission, the Division may use whatever means are practical and efficient, including public workshops or staff-initiated workgroups. Such workshops or workgroups should be noticed where appropriate and should strive to include the general public.
- c. Work Groups: A work group may be convened by staff at the direction of the Commission for the purpose of producing either a consensus proposal or to develop a core proposal and potential alternatives. Commissioners generally do not participate in workgroups. Public announcement of any workgroup will be provided as deemed appropriate by the Commission or workgroup participants. At the end of any workgroup, any person, including the Division as staff, may proceed with a request for formal action before the Commission at a properly noticed meeting.

- d. Subcommittees. The Commission may convene a subcommittee of Commissioners, and appoint a Commissioner to chair a subcommittee to evaluate any issue that may come before the Commission, including new regulatory requirements or revisions to existing regulations. A subcommittee consists of one or more Commissioners. If more than one Commissioner is on the subcommittee, subcommittee meetings will be noticed pursuant to the Open Meetings Act. Members of the public may participate to assist the Commission, but are not part of the subcommittee. A subcommittee's recommendation is a proposal to generate discussion in an efficient and focused hearing before the full Commission. Commission members of the subcommittee are not committed to the subcommittee's recommendation. Regulation text developed by the subcommittee generally will be proposed and presented in a petition by the Division as staff. Members of the public and the Division may offer alternate proposals to those of the subcommittee. Any subcommittee formed shall exist for one year unless renewed by the Commission.

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

- a. Rights and obligations of the parties, non-parties, and the Division:
 - I. Parties. Persons granted party status shall have the right to make an individual presentation either orally or in writing, or both, during the formal hearing, to make appropriate objections, and to cross-examine witnesses. Parties to the formal hearing must comply with the prehearing procedures set forth in Section 7.08, if elected by the Commission, including any order of the Commission or the Hearing Officer. Failure to comply with the prehearing procedures or any order may result in loss of party status, as determined by the Commission or the Hearing Officer.
 - II. Non-Parties. Persons who do not desire party status but would like to participate in the formal hearing process may make their views known to the Commission by speaking during the public comment period during the hearing.
 - III. Division. The Division acts as staff to the Commission in any rulemaking hearing and typically is not a formal party. In fulfilling its role as staff, the Division will present evidence, testimony, and background information; respond to questions; and provide any additional information during the hearing requested by the Commission. The Division or the Assistant Attorney General representing the Division may, as necessary to assist the Commission, make objections or cross-examine witnesses, in the discretion of the Commission.
- b. The Commission shall conduct all formal hearings in accordance with the following provisions:
 - I. Public participation encouraged: The Commission shall hold a public hearing before promulgating any rule or regulation. The Commission encourages the public to

participate in rulemaking hearings by commenting on proposed rules or alternate proposals. The Commission will generally afford any person an opportunity to submit data, views or arguments orally at the hearing, but, where appropriate, the Commission may require that such data, views or arguments be submitted in writing in advance of or at the rulemaking hearing as reflected in the notice of proposed rulemaking or by order of the Commission. The Commission will generally set aside a portion of the rulemaking hearing to hear public comment and testimony from those persons who are not a party to the rulemaking. The presiding Commissioner may limit oral testimony at a hearing. Organized groups are urged to identify one spokesperson. Speakers are asked to be as concise as possible and to avoid repeating comments made by others.

- II. Submission of Written Materials. Members of the public may submit written materials electronically to the Commission before a formal hearing. If members of the public would like the Commission to review written material prior to the hearing, such documents must be electronically filed with the Commission in sufficient time to be included in the meeting materials for the Commission (generally three weeks prior to the noticed hearing), or as otherwise specified in the notice of proposed rulemaking hearing. The Commission may provide parties or the Division an opportunity to rebut oral testimony or documents submitted by the public during a rulemaking hearing and may provide time as reasonably necessary for such rebuttal.

- III. Order of presentation: If a prehearing process is utilized, the prehearing order issued by the Hearing Officer or the Commission Administrator following the prehearing conference will specify the order of presentations before the Commission and the time allotted for each presentation, rebuttal or closing statements. If a prehearing process is not used, rulemaking hearings generally will involve:
 - A. Opening the Hearing and Disposing of any Procedural Issues. Procedural issues may include prehearing motions, remaining party status issues, late filings, etc.... The Commission at this time should determine whether any potential conflicts of interest exist as described in Section 7.04.

 - B. Presentation by the Division. The Division will make a presentation to the Commission describing the background and basis for the proposed rule. This introductory presentation may, at the discretion of the Commission, be provided by a party proposing the rule instead of the Division.

 - C. Public Comment. The chairman or the presiding Commissioner may specify when and how public comment may be taken during the proceeding.

 - D. Witness presentations. Oaths or affirmations may be required of persons who make statements at rulemaking hearings. The Commission encourages the general public and party witnesses to make plain, brief and simple statements of their positions. Where submittal of written testimony is required prior to the hearing pursuant to the notice of proposed rulemaking or the prehearing order, only an oral summary of that testimony should be provided at the hearing. When not explicitly required, the Commission encourages filing of written testimony prior to the hearing in accordance with the prehearing procedures.

- E. Cross-examination and Objections. Where the Commission allows participation as a party, a party may make objections, and all witnesses are subject to cross-examination by or on behalf of persons who have party status. In all hearings, witnesses are subject to cross-examination by or on behalf of the Commission, and the Commission may allow its staff and/or legal counsel for the Commission, or Division staff and/or legal counsel for the Division to conduct cross-examination. Any witness whose oral and/or written testimony a party wishes to have as part of the record shall be available for cross-examination at the rulemaking hearing. Where lengthy cross-examination would use undue time, the presiding Commissioner may require each party to estimate the amount of time necessary for cross-examination. To promote an efficient and focused hearing, the presiding Commissioner may limit each party's time for cross-examination.
- F. Summation of facts and law. The Commission, after the receipt of evidence, may allow or require staff, parties, or other persons to present oral or written summations of the facts and the law, either at the hearing or subsequent thereto, prior to the Commission deliberations.

(4) Role of the Division. The Division shall act as staff to the Commission in any informal or formal hearing. In fulfilling its role as staff, the Division may present evidence, provide background information, make proposals or alternate proposals, and summarize evidence and any matters settled before the hearing, make recommendations to the Commission; make objections or cross-examine witnesses, and provide other support as necessary to assist the Commission. The Division may affirmatively request party status in a proceeding before the Commission. If the Division has formally gained party status, it may continue to provide staff services to assist the Commission, as directed by the Commission or the Hearing Officer.

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

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

(6) Continuing hearings. Upon motion by a party for good cause, or by its own motion, the Commission or the Hearing Officer may cancel, or continue any formal hearing to a later date, as deemed necessary and appropriate. For continuances, the new hearing date, time and place may be announced by an amended notice or by a statement at the time and place of the initial noticed hearing. The Hearing Officer may also continue a hearing by order based upon a written request and for good cause, or when the officer deems it appropriate. The hearing will be rescheduled for the next Commission meeting or at the convenience of the Commission. If requested to continue a

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hearing a second time, the Commission, in its sole discretion, may vacate the hearing and re-notice it for a later date pursuant to Section 7.05(7) and in compliance with Section 24-4-103(4)(d), C.R.S.

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

§ 7.07 Formal Actions

(1) General.

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

(2) Interpretive Rules.

a. Interpretive Rule Request.

- I. In the event that an administrative law judge requests an interpretive rule as provided in Section 25-15-308(3)(g), C.R.S., or a district court requests an interpretive rule as provided in Sections 25-15-305(2)(e) and 30-20-113(2.5)(e), C.R.S., the district court or the administrative law judge are to make a request to the Commission.
- II. 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 \$100.00.
- III. If the Commission agrees to issue an interpretive rule, the Commission shall publish notice of the interpretative rulemaking proceeding in accordance with the provisions of Section 24-4-103, C.R.S. within 45 days of receipt of the request.
- IV. An interested party may submit an electronic filing with the Commission within 15 days following the date of publication of the notice.

b. Issuance. The Commission shall issue the written interpretive rule within 30 days following the deadline for the receipt of any written material.

c. Legal Effect. The legal effect of any interpretive rule shall be determined in accordance with applicable law.

(3) Administrative Penalty Reviews.

- a. Due Process. 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. Commission Review. 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. Scope. 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.
 - I. An aggrieved party shall make the request for the Commission to review the administrative law judge's determination, in writing. The requesting party shall send the request electronically and by first class mail to the Commission within 30 days of the administrative law judge's decision.
 - II. The requesting party shall provide the Commission with an electronic version of the written transcript and any exhibits introduced and admitted at the administrative hearing 20 days after submitting the review request to the Commission.
 - III. Upon receipt of the request, the Commission Administrator or the Commission Assistant shall notify the Commission and the Attorney General representing the Commission. Within 45 days of receipt of the request the Commission shall give notice to the public of the administrative penalty review.
 - IV. Unless the Commission in its discretion is unable to conduct the review within the time frame set forth in this section or the parties to the review mutually agree to an extension, a review of the administrative penalty shall commence within 120 days after receipt of the request.
 - V. The Commission may request the parties to submit a written brief or summary of their position. The written brief or summary shall be electronically filed with the Commission within 30 days from the date of the Commission's request. The requesting party shall also electronically provide a copy of the brief to all other parties to the administrative hearing. The responding party(ies) shall have 14 days from receipt to file a responsive brief with the Commission. The responding party shall also electronically provide the responsive brief to all other parties to the administrative hearing. The requesting party shall have seven days from receipt 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.
 - VI. 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:
 - A. The seriousness of the violation;

- B. Whether the violation was intentional, reckless, or negligent;
 - C. The impact upon or the threat to the public health or the environment as a result of the violation;
 - D. The degree, if any, of recalcitrance or recidivism upon the part of the violator;
 - E. The economic benefit realized by the violator as a result of the violation;
 - F. 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;
 - G. 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;
 - H. 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
 - I. Any other aggravating or mitigating circumstances.
- e. Decision. The Commission may issue its decision at the time of the review of the written materials. The written decision shall set forth the basis of the Commission's decision. Alternatively, the Commission may request a hearing, at the Commission's sole discretion, to hear testimony on any issue the Commission deems necessary. If a hearing is requested, notice shall be provided pursuant to 25-15-302(9)(b) and these procedural rules. The Commission will issue a written decision within sixty (60) days after the hearing date, unless an alternative timeframe is determined by the Commission.

(4) Rulemakings.

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

Commission elects to hold an informal hearing, the procedures of Section 7.06(2) shall apply.

- d. Petitions for Rulemaking. Except for emergency rules addressed in paragraph (5) of this section, the complete petition must be filed by electronic filing, unless granted an exception to electronic filing. Complete petitions must be filed by 11:59 p.m. 30 days prior to the scheduled meeting of the Commission at which the petitioner desires to have the Commission hear the petition. Complete petitions must also be delivered by that time to the Assistant Attorneys General representing the Commission and the Division, and to the Director of the Division. Failure to comply with this requirement will generally result in the petition not being considered during the desired meeting of the Commission. In limited circumstances, the Commission may grant a petitioner's request to have a late petition heard upon showing of good cause.
 - I. Contents of a Petition. Petitioners are advised to contact the Commission Administrator or the Commission Assistant when preparing their petition to discuss whether the petition is complete and addresses all requirements. The Commission may return any incomplete petition with a brief explanation of how the petition is deficient. A complete petition for rulemaking must include the following information:
 - II. Petition Cover Sheet. Petitioners shall provide a cover sheet that identifies the person(s) requesting the rulemaking (including the representative's name, address, electronic mail address, and telephone numbers) and includes: (a) a statement describing the nature of the request and the need for the regulation; (b) a statement broadly summarizing the issue to be addressed by the petition; (c) a statement summarizing what, if any, policy, factual, and legal issues arise due to the proposal; (d) a statement summarizing any other person(s) or party(ies) included in the drafting and development of the proposed rulemaking; (e) includes a statement of the Commission's authority to promulgate the rule, citing specific relevant sections of CHWA, SWDA, or other relevant statute; and (f) a brief narrative statement identifying what elements are not specifically required by provisions of the federal Resource Conservation and Recovery Act or are otherwise more stringent than the requirements of the Resource Conservation and Recovery Act, if applicable.
 - III. Proposed Regulation Text: Petitioners must also provide the Commission with the precise language of any proposed new regulations or amendments to existing regulations. Proposed regulations or amendments to existing regulations must be presented in a form that the Commission can view in context, (i.e., track changes/redline or strikeout with small caps if track changes is not available), and the petitioner must precisely identify the sections of the Commission's regulations that are affected by the proposed change.
 - IV. Range of Regulatory Alternatives: The Petitioner shall also provide a statement describing the range of regulatory options available to the Commission, including a no-action alternative. The statement should discuss those regulatory options that reasonably flow from or relate to the petitioner's proposal and relevant existing regulation(s).

- V. Statement Regarding Federal Requirements: For any provision that is not required by federal statute or regulations, the Petitioner shall provide a brief statement that identifies whether the proposed rule is more stringent than the federal statute. This statement regarding federal requirements may also be used in the notice of rulemaking, and in the final Statement of Basis and Purpose.
- VI. Draft Statement of Basis, Specific Statutory Authority, and Purpose: The Petitioner shall also provide a draft statement of the proposed rule's basis, statutory authority, and purpose, which explains the Commission's rationale for adopting a proposed rule or amendment. The statement must contain:
- A. A general statement of the basis for the rules;
 - B. The specific purposes of the rule (e.g., "to implement the provisions regarding ..., by requiring that" is a way to frame this required discussion);
 - C. The specific statutory section(s) authorizing the rulemaking;
 - D. The Commission's authority to adopt the rulemaking; and
 - E. For any rule or amendment which involves technological or scientific issues, an evaluation of the scientific or technological rationale justifying the proposal.
- VII. Other Information. Where appropriate, a statement providing any other concise background material that would help the public and the Commission to understand the impact of the proposed rule.
- VIII. Incorporation by Reference. A petitioner who seeks to incorporate any material by reference must comply with Section 24-4-103(12.5)(a)-(c), C.R.S. The petitioner must also provide one complete copy of any material to be incorporated by reference to the Commission. If the Commission adopts the rule with the incorporated by reference materials, the Commission will forward the incorporated material to the state publications depository and distribution center.
- e. Regulatory Analysis. Upon a written request filed with the Commission at least 15 days prior to the hearing on a proposed rule, the Commission, or its staff, shall prepare a regulatory analysis of the proposed rule pursuant to Section 24-4-103(4.5), C.R.S. The analysis will address the topics reflected in Section 24-4-103(4.5)(a)(I) - (VI), C.R.S., will include quantification of the data to the extent practicable, and will take account of both short-term and long-term consequences. The regulatory analysis will be available for inspection in the office of the Commission at least five days prior to the hearing on the proposed rulemaking and made available on the Commission's website. Note: the petitioner for a proposed rule is encouraged to supply information with the petition or prehearing statement which could provide the basis for a regulatory analysis.
- f. Discovery. The Commission or the Hearing Officer may on their own motion, or upon the motion of staff, or any interested person or a party for good cause, take depositions or have depositions taken. Other forms of discovery may be allowed by the Commission or the Hearing Officer on their own motion, or where staff, any person or a party is granted leave to conduct such discovery for good cause.
- g. Motions. Prehearing motions are to be filed with the Commission through electronic filing. Copies are to be provided to the parties, the Division, the Assistant Attorneys General representing the Commission and the Division, and to any other person as

required by the notice of proposed rulemaking. The Commission or the Hearing Officer may require that parties, the Division, or other persons electronically file in advance of the hearing, all motions or requests for rulings that they intend to make with respect to the proposed rulemaking. Filings that must be made prior to the hearing include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination prior to final agency action based on the record, or any matter that may reasonably be disposed of prior to receiving testimony or other evidence.

- h. Subpoenas. The Commission or the Hearing Officer shall issue subpoenas, without discrimination, to public and private persons or parties. 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 proponent of the subpoena may petition the Commission to use its authorities provided in Section 24-4-103(14), C.R.S.
- i. Ex parte Communications. Ex parte communications are permissible if agreeable to the Commissioner(s) involved, but such communication must be disclosed to the Commission as a whole and such information, if to be considered or relied upon in final decision-making, will be made part of the record by the Commission. Once the rulemaking record is closed, new information will only be presented to the entire Commission upon approval of a request to reopen the Commission record. Ex parte communication with individual Commissioners should not occur subsequent to the close of the rulemaking record and before the Commission takes final action. If ex parte communications do occur in that time frame, that fact will be disclosed to the full Commission, and the Commission may reopen the record to allow the parties, the Division, and the public an opportunity to respond to the substance of the ex parte communication.
- j. Alternate proposals. Alternate proposals may be submitted at the same time that the petition is to be considered. Persons who submit an alternate proposal for consideration while the Commission is considering a petition for rulemaking and who intend that the alternate proposal be considered with the original petition must comply with the electronic filing requirements and the requirements of Section 7.07(4)(d). If a regulatory analysis and/or cost benefit analysis was completed by the proponent, the proponent of the alternate proposal is also required to provide a regulatory analysis and/or cost benefit analysis based on the alternate proposal. Submission of an alternate proposal will not change the procedural process for any prehearing or hearing, unless otherwise determined by the Commission or Hearing Officer.
- k. Prehearing Procedures. Unless the Commission determines that the use of prehearing procedures would substantially facilitate the rulemaking process, no prehearing process, conference or statement is required. If the Commission determines that a prehearing process is required, the notice of proposed rulemaking shall so specify and the procedures set forth in Section 7.08 are applicable.

(5) Emergency Rules.

- a. The Commission may adopt temporary or emergency rules in accordance with the requirements of Sections 24-4-103(6) and (8)(d), C.R.S. without complying with the

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procedural requirements above. The Commission may adopt such a rule if it finds on the record that immediate adoption of the rule is:

- I. Imperatively necessary to comply with a state or federal law or federal regulation, or
 - II. Imperatively necessary for the preservation of public health, safety or welfare; and,
 - III. Compliance with the rulemaking procedural requirements of this regulation (excluding this subsection) would be contrary to the public interest.
- b. Unless the immediacy of the situation precludes any preparation, the person requesting a temporary or emergency rule shall prepare at least a brief petition that describes the issue at hand, provides the proposed rule text (i.e., track changes/redline or strikeout with small caps if track changes is not available), includes a statement of the reasons for the action (i.e., the need for the emergency action), and includes proposed findings of the basis for the Commission's action under paragraph (a) of this subsection. This petition should be filed with the Commission Administrator at the earliest possible date. The Commission will endeavor to provide notice of the proposed emergency rule, as practicable.
- c. The required findings in paragraph (a) of this subsection and a statement of the reasons for the action will be published with any temporary or emergency rule adopted by the Commission. A temporary or emergency rule is effective upon adoption or on such later date as is stated in the rule, will be published promptly, and will remain in effect for not more than 120 days or less from the date of adoption, unless it is made permanent in accordance with the APA.

§ 7.08 Prehearing Procedure.

- (1). These prehearing procedures provide a process by which issues related to a proposed rule are raised and discussed. It is the strong desire of the Commission that the parties and the Division resolve as many issues as possible by negotiation prior to the hearing. The Hearing Officer or the Commission, at its sole discretion, may amend the prehearing process through an order issued by the Hearing Officer or the Commission.
 - a. Selection and Authority of the Hearing Officer. The Commission Administrator requests that a Commissioner volunteer to serve as the Hearing Officer for the prehearing process and the rulemaking hearing. If no Commissioner volunteers, the Commission Administrator will appoint a Hearing Officer. The Hearing Officer may limit the number of pages in a prehearing statement or use the procedures set forth in Section 7.07(1)(a) and may limit the number of witnesses and exhibits. The Hearing Officer 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.
 - b. Rights and Obligations of Parties, Non-parties, and the Division.
 - I. Parties. Persons granted party status have the right to submit a prehearing statement, motions, response and rebuttal statements, expert testimony, alternate proposals or other documentation as permitted in these procedural rules and by the Commission or Hearing Officer.

- II. Non-parties: Persons who do not desire party status but would like to participate in the rulemaking process may make their views known to the Commission on any rulemaking by submitting comments in writing in advance of the hearing or presenting oral testimony during the hearing at the time the Commission designates for public comment.
 - III. Division: In fulfilling its role as staff, the Division may present or submit evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, make recommendations to the Commission and perform other duties as requested by the Commission. The Division or the Assistant Attorney General representing the Division may, as necessary to assist the Commission, make objections or cross-examine witnesses, in the discretion of the Commission. The Division, at its discretion, may affirmatively request party status pursuant to the procedure in this section. If the Division formally gains party status it may continue to provide staff services to assist the Commission, as directed by the Commission or the Hearing Officer. Whether the Division participates as staff, as a party, or both, it shall comply with the prehearing procedures.
- c. Gaining Party Status. The requirements for gaining party status to any particular rulemaking typically are specified in the notice for that rulemaking. In order to be granted party status, the petitioner must comply with the requirements of this subsection. Where the notice of rulemaking specifies that a petition for party status is required, the petition shall be electronically filed and must: (a) identify the applicant; (b) provide the name, address, electronic mail address, and telephone of the applicant or applicant's representative; and (c) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application. Electronically mailed copies must also be timely received by the Assistant Attorneys General representing the Commission and the Division. As may be modified by any notice for a rulemaking, the following will have party status in rulemaking proceedings before the Commission:
- I. The Petitioner. Any person petitioning for rulemaking shall automatically be granted party status.
 - II. The Proponent of an Alternate Proposal. Any person who proposes an alternative to a proposed rule or revision shall comply with the filing requirements of this section and provide an alternate rule or revision and any other documents in accordance with Section 7.07(4)(j) or any other provision of these procedural rules. The required documents must be filed by the date specified in the notice for party status requests and not less than 20 days prior to the rulemaking hearing.
 - III. Any Other Person. Any person may seek party status by petitioning the Commission. The petition to the Commission shall include a brief summary that includes the reason in which the person is requesting party status. Granting of party status under this section is in the sole discretion of the Commission. The petition must be filed with the Commission as specified in the notice of rulemaking by electronic filing, and if not specified in the notice then no later than 20 days before the rulemaking hearing. If granted an exception to electronic filing, the requestor must complete

filing for party status by submitting an original and three copies of the petition with the Commission by the date specified in the notice.

- IV. Late Party Status. The Commission may grant party status requests submitted fewer than 20 days before the hearing on a particular rulemaking only upon written request and for good cause. Action on such request is at the discretion of the Commission or the Hearing Officer. Any such request must be filed with the Commission at the earliest possible opportunity, and must also be received by each party of record, the Division staff person identified in the notice, and the Assistant Attorneys General representing the Division and the Commission. Persons seeking party status by the act of proposing an alternative rule are subject to the time requirements provided in the notice or that are provided in Section 7.07(4)(j).
- d. Status Conference. The Hearing Officer may require one or more status conferences with the Division and the parties to a rulemaking hearing. The Commission may, in the notice of rulemaking, make attending the status conference mandatory. Status conferences will typically be held prior to the prehearing conference, shortly after the close of the deadline for party status. The Hearing Officer will preside at the status conference. The goal of the status conference is to ascertain and discuss the issues involved in the rulemaking, and to ensure that the Division and the parties are making all necessary efforts to discuss and resolve all possible issues prior to the date that prehearing statements are due. The Hearing Officer may impose appropriate sanctions on any party that fails to attend a mandatory status conference. These sanctions may include limits on the issues that may be raised at the hearing, or the denial of party status.
- e. Prehearing Conference. The Hearing Officer will set the date of the prehearing conference unless the date is specified in the notice of proposed rulemaking. The goals of the prehearing conference may include: the identification of stipulations; the identification of contested matters and issues to be raised at the hearing; the disposal of motions; the identification of witnesses and exhibits to be presented by the parties, the Division, and other persons (where applicable); and, the formulation of a prehearing order for the rulemaking proceeding. A prehearing order shall be prepared at the direction of the Hearing Officer based upon the prehearing conference. The order shall reflect any rulings made by the Hearing Officer with respect to procedures to be followed at the hearing, or any other matter. The order will specify the order of presentations and the time allotted for such presentations. The Hearing Officer may make any necessary or appropriate procedural rulings. Any party may appeal such rulings to the Commission by electronically filing a written appeal with the Commission (with copies provided simultaneously to all parties, the Division, and the Assistant Attorneys General representing the Division and the Commission) no later than seven working days prior to the hearing. The Hearing Officer may also make procedural decisions outside the prehearing conference, reflected in an order, e.g., requiring attendance at status conferences, requiring written briefs on particular legal or factual issues, requiring intermediate informational presentations, or segmenting the rulemaking hearings for the benefit of the Commission.
- I. Participation mandatory. If the Commission determines that a prehearing conference is necessary, the Commission will specify when a prehearing conference will be held pursuant to paragraph (v) of this section. Any such conference shall be held not less

than ten days in advance of the hearing, unless the Commission specifies otherwise. All parties and the Division shall participate in the prehearing conference in person. A party may submit, in writing, a request to not participate in the hearing in person. For good cause, the Hearing Officer may grant the request. Failure to comply with the requirements of this section may result in denial of a party status, dismissal of a party or limits on the issues that may be raised at the hearing.

- f. Prehearing Statements. Unless provided otherwise in the notice of proposed rulemaking, at the time and place stated in the notice for the prehearing 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 prehearing statement and shall submit electronic filings of their prehearing statement to the Commission Administrator, who shall distribute them to the Commissioners, the Assistant Attorneys General for the Commission and the Division, and the parties. It is the intent of the Commission that final positions on the issues in a rulemaking (including final alternate proposals) will be reflected in the prehearing statements for the prehearing conference, so that all necessary discussions and revisions to positions will take place before the prehearing statements are due. If it is apparent that the final positions of the parties and the Division are not reflected in the prehearing statements, i.e., if further discussions, revisions to positions, or alternate proposals are warranted at the time of the prehearing conference, the Hearing Officer may decide to continue the rulemaking hearing. The prehearing statement must contain:
- I. A cover document that summarizes, in layperson's terms, the Division's or the party's general position and the contents of the prehearing statement. The cover document must also summarize any voluminous exhibits and provide a reasonable estimate of the time necessary for presentation at the hearing;
 - II. A prehearing statement that explains the factual and legal issues that arise from the rulemaking proposal, and the position being taken on each issue. Briefs discussing legal issues are encouraged, and may be required by the Hearing Officer;
 - III. A list of the issues to be resolved by the Commission during the hearing;
 - IV. Copies of all exhibits to be introduced at the hearing;
 - V. A list of witnesses who will testify and a brief description of their testimony, including where applicable, the exhibits they will discuss or rely upon. Any witnesses not listed in the prehearing statement will be prohibited from testifying unless the Hearing Officer approves the witness upon a request and for good cause;
 - VI. All written testimony to be offered into evidence at the hearing. (Note: the Commission encourages, and in some instances may require, witness testimony to be provided in writing);
 - VII. Any alternate proposal to the proposed rule in the format specified in Section 7.07(4)(j), above; and
 - VIII. Procedural or evidentiary issues and motions to be resolved.

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- g. Response Statements. Each party shall be afforded the opportunity to provide a response to prehearing statements filed by the proponent, the Division or any other party. Response statements are due 14 days following the filing of the prehearing statement or at such other date and time as set by the Hearing Officer. Response statements may also include identification of witnesses, testimony and exhibits.
- h. Rebuttal Statements. The Hearing Officer through written order may allow for rebuttal statements by the proponent of the proposed rule to be filed electronically with the Commission within seven working days after the response statements are filed with the Commission. Written rebuttal statements may include identification of rebuttal witnesses, rebuttal testimony, and rebuttal exhibits. Rebuttal statements are limited to topics raised in the response statements of the proponent, the parties or the Division, and are not to raise new issues or arguments. New issues and arguments raised in rebuttal statements will not be addressed by the Commission. The rebuttal statement must be delivered by electronic mail to each party, to the Assistant Attorneys General for the Commission and Division, and to the Division staff person for the proceeding by 11:59 p.m. of that same day.
- i. Additional Conferences. Where scheduling allows and it appears that an additional conference would be useful, the Hearing Officer may schedule an additional status conference prior to the hearing.
- j. Alternate Proposals Offered After the Prehearing Conference. Except as provided in this subsection, the Hearing Officer will not accept an alternate proposal by a party after the prehearing conference. However, the parties are encouraged to develop consensus positions and to narrow the issues in contention based upon discussions during or after the prehearing conference and prior to a final Commission action in the proceeding provided the Commission and the parties have a reasonable opportunity to evaluate such alternate proposals. The Commission or the Hearing Officer may grant leave to submit such alternate proposed rule text for good cause shown. In granting or denying such leave, the Commission or the Hearing Officer will consider the timing of the proposal and the hearing, the complexity of the issues, and whether the parties and the Division are or expect to be in agreement on such alternate proposed rule text.

§ 7.09 Final Commission Action and Post-Hearing Procedures.

(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, any alternate proposals, testimony, evidence, exhibits, prehearing submittals, and other matters presented or considered, matters officially noticed, rulings on exceptions, any proposed findings of fact and conclusions of law, and any written comments or briefs filed.

(2) Deliberations of the Commission are open to the public, and do not constitute part of the rulemaking record. The rules or regulations will be consistent with the subject matter as set forth in the notice of proposed rulemaking.

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- (3) The Commission may designate a subcommittee of Commissioners to assist with deliberations. If the Commission will deliberate at some time other than immediately after the close of the record for that particular hearing, appropriate notice will be given to the parties and to any other person requesting such notice.
- (4) If a rule approved by the Commission during a rulemaking hearing differs substantially from the original noticed proposal or any alternate proposals, the Commission may, at the request of any person, or party, or on its own motion, make the proposed final rule available for additional comment prior to taking final action.
- (5) After consideration of the relevant matter presented, the Commission shall adopt simultaneously with the rules or revision a statement of basis, specific statutory authority, and purpose pursuant to Section 24-4-103(4)(c), C.R.S.
- (6) The rules, as finally adopted, shall be consistent with the requirements of Section 24-4-103(4)(c), C.R.S.
- (7) The Commission shall maintain an official formal rulemaking record for each proposed rule for which a notice of proposed formal rulemaking has been published in the Colorado register. The formal rulemaking record shall be in accordance with the requirements of Section 24-4-103(8.1), C.R.S.
- (8) Within 180 days after the last public hearing on the proposed rule, the Commission shall adopt a rule pursuant to the rulemaking proceeding or terminate the proceeding by publication of a notice to that effect in the Colorado Register.
- (9) Except as provided in Section 7.07(5) of this rule, a rule shall become effective 20 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.
- (10) 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 Sections 25-15-301 *et seq.* and article 4 of Section 24, C.R.S. except that, any judicial review of a rule shall be filed in the district court for the Second Judicial District pursuant to 25-15-305(1)(b), C.R.S.
- (11) 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.
- (12) Each rule adopted by the Commission, together with the Attorney General's opinion, shall be filed in accordance with Sections 24-4-103(11)(d) and (12), C.R.S.
- (13) 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.
- (14) 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.

§ 7.10 Basis and Purpose

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

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 rulemaking, reviews of administrative penalties and informal hearings. The rules also set forth any prehearing proceedings and procedures that the Commission may impose. 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, Sections 24-4-101, *et seq.*, C.R.S., the Colorado Hazardous Waste Act, Sections 25-15-301, *et seq.*, C.R.S. ("CHWA"), and the Solid Waste Disposal Sites and Facilities Act, Sections 30-20-101 *et seq.* ("SWDA"), and to foster substantive discussion on the issues and minimize burdensome procedures.

The original basis for these regulations was the passage of Senate Bill 116, during the 1991-1992 legislative sessions. CHWA created the Hazardous Waste Commission and authorized it to promulgate rules for the operation of the Commission and hearings and proceedings before the Commission. CHWA 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 were first 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. The SWDA authorized the Commission to be the promulgating and adopting entity for solid waste regulations in the state. These Part 7 rules were amended on May 17, 2011 to reflect this name change.

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

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