



Topic: Attorney Regulation Update and Hot Topics

Speaker: Bryon M. Large, Assistant Regulation Counsel in the Trial Division at the Colorado Supreme Court Office of Attorney Regulation Counsel

Time: Tuesday, 11, 11:30am-1:15pm (please note updated end time)

CEMS has applied for one and one-half (1.5) *Ethics* CLE for this presentation

Mr. Large presentation will touch on three legal ethics topics. The first portion of the presentation will cover the Office of Attorney Regulation's process for attorney oversight and enforcement of the Rules of Professional Conduct. Second, Bryon will present recent statistics on complaints and enforcement of discipline, highlighting the areas where attorneys most often find themselves in trouble. Finally, the presentation will cover ethics topics that are particularly important to CEMS members, including: Colo. RPC 1.6 regarding the duty of confidentiality; Colo. RPC 1.7 and 1.8 regarding conflicts of interest; and confidentiality and conflict of interest issues associated with working with independent environmental contractors and consultants.

Bryon M. Large is an Assistant Regulation Counsel in the Trial Division at the Colorado Supreme Court Office of Attorney Regulation Counsel. He received his Juris Doctor degree from the University of Denver and his undergraduate degree in Spanish from the University of New Mexico. Prior to joining the office, Bryon worked in private practice as an immigration attorney for over nine years.

For complete topic information, a full biography, and reservations, please follow this link: [CEMS February Luncheon](#)

LOCATION: PLEASE note that the location for the February CEMS luncheon will be Davis Graham & Stubbs LLP, 1550 17th Street, Suite 500 (5th Floor), Denver, CO 80202. When entering the building, please proceed to the fifth floor to register with the CEMS representative.

MEETING FORMAT: Members may either bring their own lunch and attend the meeting for no charge, or they may request that CEMS order a box lunch for them. The cost of the box lunch for members is \$16.00; for non-members, \$19.00.

RESERVATIONS: PLEASE give your name, company name and phone number via email to admin@coems.org. **PLEASE INDICATE IF YOU ARE RESERVING A BOX LUNCH OR BRINGING YOUR OWN.** Reservations must be received BEFORE Friday, February 7, 2020 at 5:00PM. No reservations can be taken after this date due to building security restrictions! Payment of \$16.00 for members, \$19.00 for non-members will be accepted at the door with prior reservation. Please cancel your reservation by Friday, February 7, 2020 if you are unable to attend. It is the policy of the Society to bill for meals reserved but unclaimed. You may also pay with credit card via PAYPAL by following this link: [CEMS February Luncheon](#)

NOTICE: CEMS would like to thank Davis Graham & Stubbs LLP for the use of meeting space and would like to emphasize that the use of Davis Graham & Stubbs LLP space does not constitute endorsement of CEMS, sponsors of CEMS functions, or the content of CEMS workshops or meetings.

SAVE THE DATES

CEMS Movie Night

Tuesday, April 21st, 5:00pm - 9:30pm

Sie FilmCenter, 2510 East Colfax, Denver, CO

Come spend Earth Day Eve with your Colorado Environmental Management Society colleagues!

2020 CEMS Annual Scholarship Golf Tournament

June 8, 2020

The Club at Rolling Hills



COLORADO ENVIRONMENTAL MANAGEMENT SOCIETY 2020 SCHOLARSHIP APPLICATION

The Colorado Environmental Management Society (CEMS) is a non-profit organization (Section 501(c)(06) organization under the IRS code) created in 1985 to provide a forum for the exchange of information concerning technologies, laws and regulations, and other current environmental issues. CEMS membership consists of technical and legal professionals from environmental organizations, government agencies, academia, industry and the private sector.

MISSION STATEMENT

To provide a mechanism for professional enhancement of its members with respect to environmental and health and safety (EHS) management. In addition, CEMS seeks to serve government, industry, environmental organizations and individuals in the development and use of prudent EHS management practices in the State of Colorado. It is the intent of the Society to be the premier non-profit professional EHS management organization in Colorado.

www.coems.org

A. Eligibility

- Students must be currently enrolled in and physically attending an undergraduate or graduate program at a Colorado university or college.
- Applicants cannot graduate before the end of the 2020 Fall semester.
- Students must be studying engineering, geology, environmental sciences, law, or another field in which they may address environmental issues.
- Students must intend to work in an environmental field.
- Students must complete and return the application as noted below.
- CEMS Officers, CEMS Board of Directors, the CEMS Scholarship Selection Committee, and family members of these individuals are not eligible to receive these scholarships.

B. General Information

- CEMS plans to award up to three scholarships(s): One for an undergraduate, one for a graduate (Master's or Doctoral) student and one for a law student. The amount to be awarded in 2020 is up to \$3000 per scholarship. Awardees will be notified on or before March 31, 2020 and will be announced on our website after all awardees have been notified.
- In addition to monetary compensation, awardees selected to receive this scholarship:
 - Will have their essays and biographies published in the CEMS' monthly newsletter.
 - Will receive one-year free membership to CEMS. Awardees and a colleague may attend each monthly meeting at no charge.
 - Awardees must attend one monthly CEMS meeting in the spring/summer of 2020 to be recognized and honored by our membership. Meetings occur from 11:30-1:00 p.m. the second Tuesday of each month at the EPA office in Denver or other downtown Denver locations.
 - Awardees are invited to participate in a poster session at the CEMS Fall Conference in October.

Return completed application via email to: scholarships@coems.org

Applications must be received by midnight Mountain Standard Time on Sunday, March 1, 2020.

Please follow this link for the scholarship application in .pdf and .docx formats:

[CEMS 2020 Scholarship](#)

From the Board...Summary of Changes to ASTM's Standards for Phase I Environmental Site Assessments, Phase II Environmental Site Assessments, and Continuing Obligations by Evan Singleton, Gablehouse Granberg, LLC

Last February I wrote an [article](#) about ASTM International's review and renewal of three standards that are at the heart of the liability protections provided to innocent purchasers and owners of contaminated property. Those are the standards for Phase I and II Environmental Site Assessments (ESAs) and Identifying and Complying With Continuing Obligations. The new standards have been voted on and approved by the applicable ASTM committees, and they will be published soon. This piece follows-up on last year's article by summarizing key substantive changes that went into the new standards.

For a quick refresher, the Phase I and II ESA Standards provide the requirements for pre-purchase due diligence necessary to obtain liability protections. The Continuing Obligations Standard contains some of the post-purchase steps that must be taken in order to preserve liability protections.

As I mentioned last February, a primary goal in updating the Phase I ESA Standard (E1527) was addressing data gaps in identifying recognized environmental conditions, or RECs. A concern, however, was maintaining the flexibility that's necessary due to specific site conditions and/or the availability and quality (or lack thereof) of historical records. In trying to strike the appropriate balance, the new Phase I Standard requires review of the following historical records, to the extent they are "reasonably available" and "likely to be useful," in order to identify potential RECs: aerial photographs, fire insurance maps, local street directories, and topographic maps. If these sources are not reviewed, the Phase I report should indicate why.

The updates to the Phase II ESA Standard (E1903) primarily focus on potential vapor intrusion issues. In Colorado and many other locations, vapor-related concerns have increasingly been a focal point for regulators across both compulsory and voluntary cleanup programs. Vapor issues are also becoming commonplace in RCRA, CERCLA, and other environmental litigation. As such, ASTM sought to ensure the Phase II Standard directs the investigation of potential vapor problems where appropriate. To accomplish this goal, the new Standard adds "soil gas" to the list of environmental media that should be addressed by Phase II conceptual modeling and sampling plans. The update also adds the Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air (OSWER Publication 9200.2-154, June 2015) to the list of publications that are relevant to Phase II ESAs.

(Continued on page 8)

2020 CEMS Officers:

President: Brian LaFlamme, Alexco Water & Environment Inc., (303)570-7703,

BLaFlamme@AlexcoEnv.com

Vice-President: Erik Gessert, PE, Terracon Consultants, Inc. (303)454-5277,

erik.gessert@terracon.com

Secretary: Noreen Okubo, noreen.okubo@gmail.com

Treasurer: John Fontana, Vista GeoScience, (303)277-1694, jfontana@vistageoscience.com

Past President: Steve Brauner, PhD, PE, Environmental Works, Inc., (303)328-7982,

sbrauner@environmentalworks.com

CDPHE Liaison: Fonda Apostolopoulos, CDPHE, (303)692-3411, fonda.apostolopoulos@state.co.us

Alternate CDPHE Liaison: Rachel Blomberg, CDPHE, (303)691-4024, rachel.blomberg@state.co.us

US EPA Liaison: Stephen Dymont, US EPA Region 8, (303)312-7044, dymont.stephen@epa.gov

OPS Liaison: Rob Herbert, CDLE; Division of Oil and Public Safety, (303)318-8543,

robert.herbert@state.co.us

Board Members:

Fonda Apostolopoulos, CDPHE, (303)692-3411,

fonda.apostolopoulos@state.co.us

Suzanne Gabriele, Geosyntec Consultants, (303)790-1340, SGabriele@Geosyntec.com

Andy Horn, Westwater Hydrology LLC, (303)456-1981, Andy@WestwaterHydro.com

Mike Jahn, Tasman Geosciences, Inc., (303)487-1228, mjahn@tasman-geo.com

Maggie Mandell, PE, Environmental Works, Inc., (301)943-2830, mmandell@environmentalworks.com

Evan Singleton, Gablehouse Granberg, LLC, (303)572-0050, esingleton@gcglc.com

Committee Chairpersons:

Monthly Programs:

Andy Horn, Westwater Hydrology LLC, (303)456-1981, Andy@WestwaterHydro.com

Spring Movie Event:

Monica Genadio, Environmental Science Partners, LLC, (720)936-1694, mgenadio@gmail.com

Fall Conference Co-Chairs:

Suzanne Gabriele, Geosyntec Consultants, (303)790-1340, SGabriele@Geosyntec.com

Michael Whelan, Anchor QEA, LLC, (303)952-4850, mwhelan@anchorqea.com

Golf:

Mike Jahn, Tasman Geosciences, Inc., (303)487-1228, mjahn@tasman-geo.com

Scholarship – Co-Chairs:

Fonda Apostolopoulos, CDPHE, (303)692-3411, fonda.apostolopoulos@state.co.us

Rachel Blomberg, CDPHE, (303)691-4024, rachel.blomberg@state.co.us

Website: Juliana Reid, CEMS, admin@coems.org

Products and Services



COLORADO ENVIRONMENTAL
MANAGEMENT SOCIETY

ENGINEERING, SCIENTIFIC, & LEGAL PROFESSIONALS

Advertise Your Business Here!
Please contact admin@coems.org
for pricing details.

For information on listing products and services in the CEMS newsletter, please contact CEMS at (303)674-9752 or admin@coems.org.

Looking for a New Position

CEMS posts many job opportunities on our website.

<http://www.coems.org/jobs>

If you or your company would like to post to our website, please just send over the job description, with contact information to admin@coems.org.

We also will post resumes for our members to help you find new opportunities.

CEMS Meeting Sponsorships

Sponsors for a CEMS lunch meeting are provided a table where brochures or other materials can be displayed. The cost to sponsor a CEMS meeting is \$30 for members and \$85 for non-members. The non-member rate includes a one-year CEMS individual membership. Please send your request to sponsor a lunch meeting to admin@coems.org.

RECRUIT AND PROFIT!!

Recruit a **NEW** member for CEMS and get a **box lunch** credit voucher! For each person you persuade to join CEMS, you will be issued a **box lunch** voucher that you can apply to the CEMS fee of your choice, whether it be a luncheon, workshop or your own membership renewal. Note that you cannot take credit for a member's renewal. However, there is **NO LIMIT** to the number of vouchers you can accumulate. Just have the new member put your name on the referral portion of the Membership Application Form. And keep those new members coming!

MEMBERSHIP – RENEWALS AND NEW MEMBERS

A big thank you to all those members who renewed, and welcome to our newest members.

New – Individual

Nasim Pica, CDM Smith

Renew – Individual

Sarah Babcock, EA Engineering, Science, and Technology, Inc., PBC

David Gratson, Environmental Standards Inc.

Evan Singleton, Gablehouse Granberg, LLC

Cathryn Stewart, Swift River Environmental Services, LLC

Renew – Corporate

Burns & McDonnell Engineering Co., Inc.

Raghvinder Arora Crystal Barvo-Cogar

Amber Dedus Bonnie Elder

Josh Lee Connor Marr

Kristin Marie Russo Tyler Schmidt

Angie Woehler Stephen Wood

Greg Buck

Sarah Foreman

Tiffany McCarthick

Kari Soltau

Brad Coleman

Jennifer Harris

Caroline Patelli

Chris Thebo

David Dean

Derek Holscher

Robert A. (Rob) Rowe

Mike Thomas

Cascade Technical Services LLC

Eliot Cooper

Stephanie Ellis

Mike Martin

Gannon McCormick

Scott Wisher

Robert Gildea

Jonathan Pooler

Alex Hogan

Courtney Sockwell

Chris Kudlaus

Chris Thibeault

(Continued on Page 9)

Presentation Opportunities for Upcoming CEMS Meetings

The CEMS Program Committee is currently searching for "interesting, topical and informative" presentations for our meetings in 2020 and beyond. This is a great opportunity to network with your peers, share information and technology, and become more involved with the environmental community. CEMS is interested in an assortment and variety of topics relevant to environmental and natural resources professionals. Each monthly presentation is roughly 50 minutes, followed by a question and answer period.

If you or someone you know is interested in presenting at our monthly meetings, or our annual conference, please feel free to contact our Programs Committee Chairperson, Andy Horn at Andy@WestwaterHydro.com.

Comments or suggestions from previous meetings, including the Annual Fall Conference, are also welcome. Let us know if we can publish them in the newsletter or website.

Are you a lawyer, looking for CLE's? Is someone at your office in need of CLE's? CEMS offers a very inexpensive way to earn those needed CLE's. Just RSVP to admin@coems.org, bring your box lunch, and attend for free.

CEMS REGULATORY UPDATE
FEDERAL AND STATE ACTIONS IMPACTING COLORADO

By April D. Hendricks
Burns, Figa & Will, P.C.
January 2020

On December 9, 2019, the Environmental Protection Agency (EPA) published a [final rule](#) adding hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. The universal waste rule establishes a streamlined management system for commonly generated hazardous waste, including certain batteries, pesticides, and mercury-containing equipment. Prior to the promulgation of this rule, generators of aerosol cans that had been identified as hazardous waste were subject to RCRA's Subtitle C hazardous waste management requirements. The incorporation of aerosol cans into the universal waste program relaxes these regulatory requirements, with the goal of establishing a protective system for managing discarded aerosol cans, promoting the recycling of these cans, and encouraging the development of municipal or commercial programs to reduce the number of aerosol cans discarded to solid waste landfills or combustors. This rule will become effective on February 7, 2020.

On December 19, 2019, the EPA published a [final rule](#) rescinding the 2017 amendments to the Accidental Release Prevention Requirements under the Clean Air Act Risk Management Program (RMP Rule). The 2017 amendments were originally adopted to enhance risk management protocols, including the requirements for accident prevention, information disclosure, and emergency response; however, substantial litigation delayed the implementation of the 2017 amendments to the RMP Rule, and the EPA proposed to rescind the rule in 2018, finding that certain portions of the amended rule would be overly burdensome and would not have a significant impact on accident prevention efforts. The final amendments to the RMP Rule remove most of the revisions made in 2017, including requirements for third-party audits and the inclusion of a "root cause" analysis in incident investigations. Certain other provisions of the 2017 amendments remain in the RMP Rule but have been scaled down and have delayed effective dates, including requirements for additional coordination with local emergency responders and for public meetings following accidents with offsite impacts. Additional revisions to the RMP Rule are immediately effective, including requirements for compliance audits every three years, enhanced requirements for risk management plans, and additional training requirements for employees with operational responsibilities.

On December 26, 2019, the EPA published a [final rule](#) determining that the Denver nonattainment area (consisting of Denver, Boulder, Greeley, Fort Collins, and Loveland, Colorado) has failed to attain the 2008 ozone National Ambient Air Quality Standard (NAAQS) by the applicable deadline of July 20, 2018. Accordingly, as required under Section 181(b)(2) of the Clean Air Act (CAA), the EPA has downgraded the Denver nonattainment area from "moderate" to "serious," which requires that the Denver area attain the 2008 ozone NAAQS "as expeditiously as practicable," but no later than nine years following the initial nonattainment designation, which in this case is no later than July 20, 2021. Because the Denver area has been downgraded and reclassified as a "serious" nonattainment area, the EPA also required that the State submit its revisions to the State Implementation Plan (SIP) no later than August 3, 2020.

On January 10, 2020, the Council on Environmental Quality (CEQ) published a [notice of proposed rulemaking](#) concerning CEQ's process to revise and update the regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA). NEPA establishes certain procedures that federal agencies must follow in assessing the potential environmental impacts of proposed major federal actions as part of their decision-making processes. The proposed rule consists of four major elements, including (1) simplifying and accelerating the NEPA process, which typically takes multiple years to complete; (2) clarifying aspects of the NEPA review process; (3) enhancing coordination among states, tribes, and local governments; and (4) reducing unnecessary burdens and delays. Certain significant proposed revisions include establishing time and page limits for the completion of final environmental impact statements (EIS) and environmental assessments (EA); providing greater clarification regarding whether NEPA applies to particular federal actions; providing for earlier solicitation of public comments on proposed federal actions; and streamlining the coordination process for EISs and EAs involving multiple agencies. CEQ is seeking public comments concerning the proposed regulations by March 10, 2020. A public meeting to discuss these revisions will be held in Denver, Colorado, on February 11, 2020.

From the Board *(continued from page 4)*

Revisions to the Continuing Obligations Standard (E2790) seek to conform the Standard to court decisions and guidance documents issued after its last renewal in 2011. In response to primarily federal court opinions from the last decade, the Continuing Obligations Standard now more explicitly requires innocent landowners to be proactive, or “take some action,” with respect to addressing RECs, including stopping and preventing releases and threatened releases. The Standard explains that, absent a determination from a regulatory body that no action is required, “doing nothing or waiting an extended period time before doing something could run afoul of continuing obligations.”

One particularly important factor mentioned in the revised Standard is coordination with regulatory agencies. In numerous cases reviewed by ASTM, they found that parties claiming innocent landowner status, who were determined to be in substantial compliance with a government approved cleanup plan, were also satisfying their continuing obligations. Fulfilling requirements included in a comfort letter, prospective purchaser agreement, or similar instrument is also emphasized under the renewed Continuing Obligations Standard. In the same vein, the new Standard notes that contacting and coordinating with regulatory agencies “may in and of itself be a significant factor” for satisfying continuing obligations even where site conditions do not trigger legal reporting requirements.

Preventing exacerbation of existing contamination was another focal point during the standard renewal process. Accordingly, the new Standard describes in greater detail the types of actions that may be viewed as exacerbating known contamination, which can be fatal to innocent landowner defenses. For example, failing to protect contaminated media from the elements may exacerbate contamination and jeopardize an innocent landowner’s liability protections. Likewise, grading and excavating soil/surfaces, demolishing or constructing structures above contaminated areas, and pumping contaminated groundwater are now expressly listed as activities that may exacerbate contamination. Taking proper precautions and obtaining regulatory approval for any of these listed items is advised under the revised Standard.

Taken together, the three new standards are best understood as requiring a more proactive approach to pre-purchase due diligence and post-purchase obligations. Many of these steps may already be considered industry best practices and/or have been required by regulatory agencies and courts. Now, however, they are more clearly enshrined as steps that must be taken in order to obtain and maintain innocent landowner-based liability protections.

Disclaimer: This article contains a summary and is intended to convey general information only. It is not intended to provide legal advice or opinions. No action should be taken in reliance on the information contained in this article. The author and CEMS disclaim all liability with respect to actions taken or not taken based on the contents of this article to the fullest extent permitted by law. An attorney should be contacted for advice on specific legal issues.

Evan is an Associate Attorney at Gablehouse Granberg, LLC. He earned his bachelor’s degree in political science with a minor in business from Colorado State University, and his J.D. from Arizona State University. During law school, Evan served as a member on the university’s Energy Policy Innovation Council, a joint program between the law school and other grad programs focusing on law, engineering/science, sustainability, and public policy in the energy sector. He also presented on international environmental law at the UN Framework Convention on Climate Change conference in Bonn Germany in 2013. Evan’s practice focuses on environmental litigation, clean air, clean water, and hazardous and solid waste. When he’s not working, you can probably find Evan skiing or rafting in Colorado’s high country.

MEMBERSHIP – RENEWALS AND NEW MEMBERS *(Continued from Page 6)*

LT Environmental, Inc.

Peter Abrahamson	Joshua Adams	Iheanyichukwu Agbor	Ashley Ager	Maureen Anderson
Kevin Axe	Charles Barker	Rachel Basnaw	Stacey Baum	Eric Baum
Benjamin Belill	Jessica Bonham	Jeffrey Braden	Payden Breneman	Andrew Bullinger
Daniel Burns	Anna Byers	Elizabeth Carney	Eric Carroll	Daniel Cloward
Brittany Cocina	Aimee Cole	Kendra Coreas	Tori Countryman	Rose Crompton
Taylor Culp	Adam Daniels	Gabrielle Davis	Luis Del Val	Ryan Dial
Christopher DiMarco	Deidre Duffy	Jeremy Espinoza	Ginger Fast	Brandon Finn
Colleen Flos	Alexis Fricke	Michael Furtaw	Pat Garland	Andrew Gertsch
Heather Gilbert	Laura Goodson	Garrett Green	John Groh, Jr.	Christina Gutzman
Trevor Hartwig	Dakota Hatch	Dustin Held	Dylan Helt	Devin Hencmann
Kaleb Henry	Brooke Herb	Jeremy Hill	Katharine Howe	Maggie Hunter
Stuart Hyde	Ryan Jedrzejak	Kalei Jennings	Travis Johnson	Christopher Jones
Stephen Kahn	Rahul Kaushik	Korey Kennedy	Macy Kiel	Ryan Kritzberger
Robert Kron	Kayla Kumagai	Monte Labash	Eric Lang	Paloma Lang
Elliot Lee	Christa Leibli	Karen Lim	Spencer Lo	Joshua Logan
Satanna Lyon	Willa Mandziuk	Vanessa Martinez-Brown		Jesse Maruschak
Evan Mason	William Mather	Robert McAfee	Caitlin McGinn	Christopher McGrew
Christopher McKisson	Costin McQueen	Ashley Mefferd	Dan Moir	Tacoma Morrissey
Mary Louise Mrdjenovich	Gentry Muniz	Tom Murphy	Elizabeth Naka	Bryan Paraspolo
Taylor Parman	Brook Peters	John Peterson	Steven Pike	Brian Podobnik
Chad Powell	Chris Purcell	Kris Rabida	Janice Railsback	Tanner Rausch
Robert Rebel	George Rissky	Christopher Roy	Rebecca Rudolph	Lindsay Sanders
Liz Schaack	Kyle Schildt	Laura Sheldon	Chris Shephard	Madison Shoemaker
Travis Short	Jim Short, Jr.	Stephen Sivigliano	Brian Skyles	Andrew Smith
Fatima Smith	David Stainback	Drew Stormo	Brian Sulzberger	Nick Talocco
Luke Tavares	Chad Terry	Daniel Thomas	Glenn Thompson	Javier Toquinto
Armando Trejo	Rachael Tury	Mario Venzor	Todd Warnke	Nikota Welch
Carol Whaley	Kayla White	Allison White	Ryan Zernis	