



Colorado Department of Public  
Health and Environment  
HWC-OLRA-A5  
4300 Cherry Creek Drive South  
Denver, CO 80246

# Colorado Hazardous Waste Commission

## Annual Report 2005-2006





# Hazardous Waste Commission

*Annual Report  
June 2005 – March 2006*

## Commission and Its Members

The Hazardous Waste Commission was formed in 1992. Prior to the Commission's creation, the Committee on Hazardous Waste Regulation recommended rules to the Colorado State Board of Health, and the board had the authority to adopt hazardous waste rules. The creation of the commission greatly streamlined the rulemaking process by placing all of the rulemaking authority in one entity. The commission meets, as necessary, on the third Tuesday of the month.

The commission comprises nine gubernatorial appointees selected equally from industry, the public at large and local government or academia. All appointees must be confirmed by the Colorado Senate. The membership designations of the commission ensure that varied areas of expertise and points of view in the hazardous waste arena are represented.

## The Commissioners Selected from Industry

- **Melanie Granberg:** Ms. Granberg earned her juris doctor degree from the University of Denver College of Law and was admitted to the Colorado Bar in 1999. She has a bachelor's degree from the University of Colorado. Ms. Granberg has been with the firm of Gablehouse Calkins & Granberg, LLC since 1997 and in her time there she has worked on a variety of cases advising clients in matters concerning such topics as the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act; asbestos, mold and methamphetamine cleanups; land use challenges and applications; buying and selling contaminated property; and other environmental matters.

Ms. Granberg served as President of the Colorado Hazardous Waste Management Society and has continued as a member of that group. She currently sits on the Board of Directors for the Colorado Association of Mold and Meth Professionals, a newly formed trade organization. Ms. Granberg also is a member of the Jefferson County Local Emergency Planning Committee and has considerable experience working with local and state agencies on emergency planning programs. She works closely with the Colorado Emergency Planning Commission on a variety of state-wide emergency planning issues and is the 2003 recipient of the commission's Len Boulas award for outstanding contributions in the field of hazardous materials education, planning and response. Most recently, Ms. Granberg lectured in Lucknow, India concerning emergency planning for chemical accidents. Ms. Granberg has served on advisory committees to the Hazardous Materials and Waste Management Division concerning the development of regulations pertaining to

methamphetamine lab remediation and asbestos in soils. Ms. Granberg also served as a member of the Colorado Board of Health's School Toxics Advisory Committee. This committee was formed to evaluate the scope and nature of safety issues associated with chemical storage, use and disposal in schools. From 2001-2002, Ms. Granberg served on the Colorado Land and Water Fund of the Rockies' Forest Protection Team. The team is a group of activists, lawyers, policy professionals and scientists committed to protection of public lands in Colorado and the West.

- **Lynn Kornfeld**: Lynn Kornfeld is an attorney with Faegre & Benson LLP, specializing in environmental and land use law. She has represented national and multi-national manufacturing and energy companies in resolution of a broad range of issues arising under the Resource Conservation and Recovery Act; Clean Water Act; Clean Air Act; Comprehensive Environmental Response, Compensation, and Liability Act; and their state counterparts. She also provides counsel to a broad range of commercial and industrial clients related to the purchase and sale of contaminated property, including the various issues related to the cleanup of brownfield sites under the Colorado Voluntary Cleanup and Redevelopment Act. Prior to joining Faegre & Benson LLP, Ms. Kornfeld worked for the Denver and Washington D.C. offices of Patton Boggs, LLP, where she practiced law in the Administrative and Environmental Policy groups. Before practicing law, Ms. Kornfeld worked as an environmental consultant for a large construction engineering firm where she provided a broad range of litigation support and technical environmental services for clients, focusing on Comprehensive Environmental Response, Compensation, and Liability Act cost recovery and construction claims analyses. She holds a juris doctor degree from the University of Colorado School of Law and a bachelor's degree in environmental biology and environmental studies from the University of Colorado. She is a native of Boulder, Colorado.
- **Brenda Marriott**: Brenda Marriott is a senior environmental health and safety technician at Ball Aerospace. She is responsible for organizing and maintaining various environmental programs. These programs include new material review, hazardous and non-hazardous waste management, hazardous waste training, waste determination, waste minimization/pollution prevention, wastewater and air permit compliance, wastewater sampling, chemical tracking and material safety data sheet management. Ms. Marriott prepares and maintains various reports and operating records. In addition, she assisted in the development of a new database to track paint emissions for the facility's air permit. Ms. Marriott received an Associate of Arts degree, Front Range Community College, Westminster, Colorado, May 1991; an Associate of Science degree, Front Range Community College, Westminster, Colorado, November 2000; and completed her environmental health and safety management certificate from the University of Denver in spring 2002. Brenda is involved with the Jefferson County Local Emergency Planning Committee and Broomfield Local Emergency Planning Committee.



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### *The Commissioners Selected from the Public at Large*

- **Lauren Evans:** Lauren Evans is a licensed professional engineer with more than 24 years of consulting experience, primarily in subsurface investigations and remediation projects involving hazardous waste and petroleum contamination. She has acted as project manager on all phases of these projects, from initial assessment through remedial design and implementation. Her experience includes management of projects at Resource Conservation and Recovery Act facilities and at Comprehensive Environmental Response, Compensation and Liability Act sites. She has extensive Phase I Environmental Site Assessment experience, and has assisted clients with regulatory compliance issues, as well as with environmental permitting and sensitive issue identification. Ms. Evans also has assisted attorneys with technical aspects of environmental litigation and has acted as an expert witness. Ms. Evans is originally from Pennsylvania and relocated to attend the Colorado School of Mines. Ms. Evans is a court appointed special advocate in the Denver Juvenile Court system, she is on the board of the Colorado American Council of Engineering Companies, and is the president of her neighborhood homeowner's association. She also has assisted conservation groups with evaluating operating standards for tourist boats in the Galápagos Islands, Ecuador.
- **Ann C. Umphres:** Ann Umphres is a 1982 cum laude graduate of Southwest Missouri State University with a Bachelor of Science in public administration and economics. She graduated from George Washington University National Law Center with a juris doctor degree in 1985. Ms. Umphres was an associate with Cockrell, Quinn & Creighton from 1985 to 1987, an assistant regional counsel with the U.S. Environmental Protection Agency, Region VIII, from 1987 to 1994 and is currently President of the Law Firm of Ann C. Umphres, P.C., specializing in environmental and natural resources law matters.
- **William J. Kelso:** William Kelso received a Bachelor of Science in mechanical engineering from the University of Pennsylvania in 1969 and a masters in civil-environmental engineering from Northeastern University in 1972. He currently is currently an environmental engineer/project manager at Parsons Corporation. He has specialized in treatment, storage, transportation and disposal of hazardous and acutely hazardous wastes in Colorado for the past 30 years. Mr. Kelso has been responsible for engineering systems for decontamination and disposal of military wastes and commercial/industrial hazardous waste at facilities in Colorado and throughout the United States. He has prepared pollution prevention plans, best management practice plans for hazardous materials/wastes, waste minimization plans, spill prevention plans, and hazardous materials emergency response plans for numerous industrial and military facilities.

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### *The Commissioners Selected from Academia and Local Government*

- **Christina Aguilera:** Christina M. Aguilera received an associate degree in electronics engineering from Clark County Community College; is a cum laude graduate of the University of Nevada, Las Vegas with a bachelor's degree in environmental studies; and holds a master's degree of public health from the University of Northern Colorado. Currently, Ms. Aguilera is director of Environmental Services at Jefferson County Public Schools, Lakewood, Colorado. Prior to this, she was director of Environmental Health and Safety at the University of Northern Colorado for seven years. Apart from broad-based environmental

compliance, these positions afforded Ms. Aguilera a perspective of the small quantity hazardous waste generator in non-traditional generator settings. Other work history includes environmental consulting for county government and private industry primarily in subsurface investigations and remediation and technical support for the Department of Energy and the Environmental Protection Agency contractors, including environmental assessment field work for acid deposition in the eastern states.

- **Christopher Neumann:** Christopher J. Neumann is an attorney with the law firm Greenberg Traurig, LLP where he counsels clients in the petroleum, natural gas, mining, airline and retail industries on a wide variety of litigation, environmental, natural resources, administrative and insurance coverage matters. Chris also assists clients in efforts to obtain land use approvals and financial incentives for brownfield sites development projects and in efforts to resolve environmental concerns in complex business transactions. Prior to joining Greenberg Traurig, Chris served as a law clerk for the Environmental Enforcement Section of the U.S. Department of Justice and for Waste Management, Inc. Before attending law school, Chris studied and conducted research in the fields of groundwater hydrology, bioremediation and earthquake seismology at the University of Notre Dame and at Argonne National Laboratory near Chicago, Illinois. Chris received an undergraduate degree in civil engineering from the University of Notre Dame (B.S., engineering and environmental science) and a law degree (J.D.) and certificate in environmental and natural resources law from the Northwestern School of Law of Lewis and Clark College. Chris is an instrument-rated private pilot and is a member of the Aircraft Owners and Pilots Association and the American Society of Civil Engineers.
- **Len Wilson:** Len Wilson received a master's degree in public administration from the American University in 1991. She is employed with the federal government, General Services Administration in the Colorado Services Center. Currently she is contracting for construction, goods and services for the publicly owned facilities, which includes the federal courts, Transportation Security Administration and Homeland Security. Prior to that, she worked for the City and County of Denver. She worked more than 17 years in aviation at Stapleton International Airport, Baltimore/Washington International Airport and Denver International Airport. She wrote Grounded Beef: Monopoly Prices, Minority Business, and the Price of Hamburgers at U.S. Airports (Laura Langbein and Len Wilson Public Administration Review, May/June, Volume 54, Number 3, page 259). She has spent her career in the public service sector and is well versed in policy, regulation and program evaluation.

## Rulemaking Hearings and Public Outreach

### **June 21, 2005**

The commission held a teleconference on June 21, 2005. At this meeting, the commission amended § 6.04 by revising paragraph (a) to reflect the commission fees to be assessed for fiscal year 2005-2006.

### **August 16, 2005**

On August 16, 2005, the Commission held its annual and business meeting. During the annual meeting, the commission heard a presentation titled "1984-2004 RCRA Authorization – 20 Years Protecting Colorado."

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The commission adopted an amendment to § 261.31(a) that was a clarification of F019 hazardous waste listing. The amendment defined “conversion coating” as including coloring, phosphating and immersion plating when those processes are used to impart a conversion coating on aluminum.

At this meeting, the commission adopted an amendment to § 263.12 (transfer facility requirements), which added a new subparagraph (b)(1). The change requires an owner or operator of a transfer facility to maintain documentation to verify that the ten-day storage requirement of § 263.12(b) has been met. It provides that hazardous waste manifests, log sheets or other documentation showing the date of waste arrival and shipment from the transfer facility may be used to document compliance. This language provides a mechanism for department compliance officers to evaluate a transfer facility’s compliance with the ten-day storage limit requirements of § 263.12.

The commission adopted an amendment to § 265.52 (content of contingency plan). A new paragraph (g) was added: “The plan must specify: (1) the fire protection district responsible for providing fire protection services to the facility, or (2) that the facility is not within a fire protection district but is operating under its own protection plan that has been approved by the Department.” The purpose of this amendment was to prompt large quantity generators of hazardous waste to identify the fire protection district responsible for providing fire protection services for their facilities. This amendment also serves as a tool for identifying those facilities that are not in a fire protection district and, thus, who would be responsible for developing their own fire protection plan as required by section 265.31 of the regulations.

At this meeting, the commission adopted an amendment of § 100.21(d) (permits by rule – generator treatment). The new paragraph (d)(4) reads as follows: “Develops a written waste analysis plan describing the procedures that will be carried out to accomplish treatment of the waste. The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the waste being treated and contain all of the information necessary to treat the waste.” This modified the wording to be consistent with the land disposal restriction treatment requirements at § 268.7(a)(5) of the regulations. This makes the generator treatment and land disposal restriction requirements consistent with regard to notification and development of a waste analysis plan.

Also, the commission adopted an amendment to § 279.22 (used oil storage). A new subparagraph (b)(3) was added as follows: “Kept closed during storage, except when it is necessary to add or remove used oil, if the containers are being managed outdoors.” This amendment will help minimize the release of used oil from containers that are being managed outdoors by requiring that the containers be kept closed, except when it is necessary to add or remove used oil.

### **October 18, 2005**

On October 18, 2005, the commission met by teleconference to adopt an amendment of part 261, Appendix IX to conditionally delist F019 hazardous waste generated from chemical conversion coating operations conducted on aluminum at the Golden Aluminum, Inc. facility in Fort Lupton, Colorado. The commission had tentatively approved the petition on August 16, 2005. After the public notice for written comment closed on October 12, 2005, with no comments received, this petition was approved to allow Golden Aluminum, Inc. to dispose of this waste at a solid waste landfill that meets the requirements of the Colorado Solid Waste Regulations 6 CCR 1007-2, provided it complies with the conditions of the delisting.

### **November 15, 2005**

On July 1, 2001, the Colorado Environmental Covenant, SB 01-145, became law. This statute creates a mechanism for enforcing land and water use restrictions that are imposed in connection with environmental cleanup decisions. Frequently, remediation of environmental contamination does not eliminate all of the contaminants. Sometimes, engineered structures, such as caps or barrier walls, are

used to isolate residual contamination from the environment and human contact. Other times, a facility owner or operator may propose a “risk-based” cleanup, where contamination is cleaned up to levels that are safe for some exposure scenarios, but not others (e.g., a higher level of contamination is typically safe in industrial-use scenarios than in residential-use scenarios, because industrial use does not include exposures through activities such as gardening, children playing on the grounds, etc.).

The environmental covenant law applies to remediation of environmental contamination and closure of regulated hazardous waste units under the Colorado Hazardous Waste Act. The existing hazardous waste regulations refer to instruments such as “deed notices” or “deed stipulations” in situations where the regulations require that use restrictions be imposed on property that has been used to manage hazardous waste. One of the reasons for adoption of SB01-145 was that there is no Colorado case law or statute that indicates whether such instruments would be enforceable in the situations anticipated by the regulations. SB01-145 solved that problem by creating the enforceable environmental covenant.

The commission adopted amendments in Part 260, which added a definition of environmental covenant; Parts 264 and 265, which were related to post-closure requirements and land treatment facilities; and Part 100, which related to information requirements for hazardous waste disposal sites.

The amendments to the regulations that were adopted were necessary to conform the regulations to the requirements of SB01-145 and to clarify how the covenant requirement fits in with existing regulatory requirements related to land use restrictions. These amendments did not expand the situations in which a covenant is required beyond those specified in the statute. In adopting SB01-145, the Legislature found that creating the mechanism of the environmental covenant was necessary for protection of human health and the environment. The commission considered the legislative finding and adoption of SB01-145 as constituting substantial evidence to support its finding that the proposed regulatory amendments are necessary for protection of human health and the environment.

Also at this meeting, the commission adopted amendments to correct typographical errors and inadvertent omissions.

### **March 21, 2006**

At its August 16, 2005 hearing, the commission adopted an amendment recommended by the Colorado Department of Public Health and Environment, Hazardous Materials Waste Management Division, which added a new paragraph (g) to section 265.52. The commission had received comments from the Colorado Emergency Planning Commission requesting that contingency plans also identify the applicable local emergency planning committee and that a copy of the contingency plan be provided to the local emergency planning committee. The commission did not act on the requested change at its August hearing, but directed the division staff to consult with the Colorado Emergency Planning Commission to draft a proposed amendment that achieved the its intention. This consultation occurred in August and September.

The Colorado Emergency Planning Commission and the department believed, and the commission agreed, that these amendments will improve protection of human health and the environment by improving the communication and coordination capabilities of local emergency planning committee’s. Local emergency planning committees are an integral part of community response to emergency situations and frequently assist local fire departments in responding to calls for assistance. Most counties and communities in the state have relatively small fire departments; many are volunteer fire departments. Mutual aid agreements among different jurisdictions are commonly used to improve response to emergency situations. The local emergency planning committee’s facilitate local response in such situations, providing information to fire departments about hazardous materials or wastes that may be encountered at a given site. By ensuring that facilities are aware of which local emergency planning committee provides them services, and conversely, by ensuring the local emergency planning committee’s are aware of facilities in their jurisdiction that have hazardous wastes on site, the amendments to the regulations will improve the emergency response capabilities of both local fire departments and the local emergency planning committee’s themselves, resulting in benefits both to the facility and the surrounding community.



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Accordingly, the commission revised § 265.52(g) to read as follows: “The plan must: (1) identify the fire protection district responsible for providing fire protection services to the facility, or state that the facility is not within a fire protection district but is operating under its own fire protection plan that has been approved by the Department, and (2) identify the local emergency planning committee for the area in which the facility is located.”

The commission also amended § 265.53(b) to read as follows: “Submitted to all local police departments, fire departments, hospitals, local emergency planning committees, and State and local emergency response teams that may be called upon to provide emergency services.”

### *Interpretive Rules and Administrative Penalties*

The commission has the authority to issue interpretive rules and review administrative law judges’ determinations regarding amounts of administrative penalties. The commission has not issued any interpretive rules or conducted any administrative penalty reviews since its inception.

### *Other Activities and Forecast for 2006-2007*

All proposed rules that come before the commission will continue to be examined for potential multimedia impacts, pollution prevention opportunities and for regulatory necessity. The commission encourages all interested parties to participate in its activities and welcomes any suggestions for amendments to the hazardous waste regulations. Individuals or groups can be added to the commission’s mailing list by contacting the commission office.

### *Commission Information*

Commission information can be found at the following Internet address:

<http://www.cdphe.state.co.us/op/hwc/hwchom.asp>

If you have suggestions or comments please let us know.

For more information on the Colorado Hazardous Waste Commission or its Annual Report, please call Karen Osthus of the Colorado Department of Public Health and Environment at (303) 692-3466 or Laurie Perila at (303) 692-3467.



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