



Colorado Department of Public Health and Environment
Solid and Hazardous Waste Commission
OED-OLRA-A5
4300 Cherry Creek Drive South
Denver, CO 80246

Colorado Solid and Hazardous Waste Commission

Annual Report 2006-2007





Solid and Hazardous Waste Commission

*Annual Report
April 2006 – April 2007*

Commission and Its Members

In 1992, the Hazardous Waste Commission was established through 25-15-302, C.R.S. 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 commission, a Type 1 agency located within the Colorado Department of Public Health and Environment but with authority independent of the executive director, is charged with promulgating and adopting rules pertaining to solid and hazardous waste; setting fees and issuing interpretive rules for hazardous waste; and hearing appeals of administrative law judges' determinations regarding the amounts of administrative penalties for hazardous waste matters. The Solid and Hazardous Waste Commission is comprised of nine gubernatorial appointees: three members from industry; three members from the public at large; and three members from government or academia. The executive director has no statutory role in the commission.

The federal government authorizes Colorado to implement a state hazardous waste program in lieu of a federal program as long as the state program meets certain criteria. One of the major tasks of the commission is to ensure that the state hazardous waste rules are consistent with the U.S. Environmental Protection Agency's requirements so that Colorado will not lose its authorization and federal funds. The commission has the authority to adopt rules that are more stringent than the federal requirements and to list or define as a hazardous waste a waste not regulated by the federal rules, if the commission makes a written finding after public hearing and substantial evidence in the record that it is necessary to protect public health and environment. Six votes are needed and the commission also must issue an opinion referring to and evaluating public health and environmental information and studies that form the basis of the rules. The rules regarding mining and mineral processing wastes, including exploration, mining, milling and smelting and refining waste, must be identical to the federal hazardous waste rules.

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 CERCLA and RCRA; asbestos, mold and methamphetamine cleanups; land use challenges and applications; buying and selling contaminated property; and other environmental matters.

Ms. Granberg has served as President of the Colorado Hazardous Waste Management Society and is presently still a member of CHWMS. She currently sits on the Board of Directors for the Colorado Association of Mold and Meth Professionals. Ms. Granberg is also 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 has also worked closely with the Colorado Emergency Planning Commission on a variety of state-wide emergency planning issues and is the 2003 recipient of their Len Boulas award for outstanding contribution in the field of hazardous materials education, planning and response. Ms. Granberg has lectured in Lucknow, India concerning emergency planning for chemical accidents. She has also served on advisory committees to the Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division concerning the development of regulations pertaining to methamphetamine lab remediation and asbestos in soils. She was also 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.

- **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.
- **Leonard Butler:** Leonard Butler received a Bachelor of Science and Master of Science in Civil Engineering from California State University at Sacramento. He is also a Diplomate with the Academy of Environmental Engineers and is a Board Certified Safety Professional. He has been active in the Colorado Solid Waste Association of North America and currently serves as past president. Mr. Butler is currently employed as a senior engineering manager for Waste Management of Colorado, Inc. (WMC). In this role, he is responsible for solid waste management engineering at WMC's solid waste landfills, transfer stations, recycling and collection facilities. His overall engineering practice includes over 30 years working in private industry, solid waste consulting and the California Waste Management Board. He has been involved in all aspects of solid waste management engineering including facility siting, design, operation and closure. Leonard has extensive experience with (1) development of alternative final cover designs; (2) construction of solid waste facilities; (3) implementation of environmental management systems; and (4) operation of landfill gas to energy facilities at solid waste disposal sites.



The Commissioners Selected from the Public at Large

- **Lauren Evans:** Lauren Evans is a licensed professional engineer with more than 25 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 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 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.

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

May 16, 2006

On May 16, 2006, the commission held its annual and business meeting. During the annual meeting, the commission learned more about Senate Bill 06-171 that added jurisdiction over solid waste rules to its responsibilities. This bill also changed the name of the commission to the Solid and Hazardous Waste Commission.

The commission adopted amendments to the hazardous waste fees. The department determined that

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after three years under the present hazardous waste fee structure, that an increase in fees was necessary beginning in State Fiscal Year 2007. Legislation passed by the General Assembly in 2000 (SB 00-177) provided some general directives for implementation of the hazardous waste regulatory program, including guidance for future fee adjustments by the Hazardous Waste Commission. The Department is authorized by U.S. Environmental Protection Agency to operate the hazardous waste regulatory program in Colorado in lieu of the federal government. One of the key criteria evaluated by U.S. EPA in authorizing the state program is resources, both in terms of funding and in terms of qualified personnel. Without an increase in fee revenues, the Department had determined that it would not be able to operate an adequate program beginning in State Fiscal Year 2007. The purpose of these amendments was to implement a balanced increase in hazardous waste program fees that the Department expects will provide adequate funding for the hazardous waste program for a period of approximately three years. The adopted fee structure is expected to result in annual fees from treatment, storage or disposal (TSD) facilities that recoup approximately 29.7% of the Department's costs associated with these facilities. This parameter complies with the 30% limit established by SB 00-177. Also, the annual fees from generator facilities is expected to recoup approximately 49.7% of the Department's costs associated with generators and is in compliance with the 50% limit established by SB 00-177. The adjusted fees are expected to increase the revenue from fees to the hazardous waste program by approximately 29% in state fiscal year 2007. When the funding provided by U.S. EPA is considered, the fee changes are expected to increase funds available to operate the hazardous waste program by approximately 14%. These amendments also incorporated the generator fees that were established by SB 00-177 into regulation.

The regulations were amended to add a fee for conditionally exempt small quantity generators that generate certain waste codes. These waste codes (F001, F002, F004, and F005) represent the halogenated and non-halogenated solvents that are high priority wastes for the Division. The small quantity generators' fees were raised from \$3990/year to \$480/year and the large quantity generators' fees were raised from \$2,470/year to \$3,050/year. Several other changes were made to the regulations that increased the annual TSD fees, post-closure fees, and document review and activity fees.

The commission adopted the Uniform Hazardous Waste Manifest Rule at this meeting. These amendments provided state equivalency with the federal provisions that revised the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of its disposition. These revisions standardized the content and appearance of the manifest form (EPA Form 8700-22) and continuation sheet (EPA Form 8700-22A). These amendments also made these forms available from a greater number of sources and adopted new procedures for tracking certain types of waste shipments with the manifest. These shipments include hazardous wastes that destination facilities reject, waste consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States. The revisions to the federal manifest requirements lie under joint RCRA and U.S. Department of Transportation's hazardous material authority. The laws governing hazardous materials transportation require consistency in hazardous materials shipping papers, such as manifests. Consequently, States are required to adopt state analogs to the revised manifest form and associated requirements of the federal rule, regardless of whether the federal changes could be considered more or less stringent than the existing requirements.

At this meeting, the commission adopted the Nonwastewaters from Dyes and Pigments rule. These amendments added hazardous nonwastewaters generated from the production of certain dyes, pigments, and food, drug and cosmetic colorants to the list of RCRA hazardous wastes from specific sources in 6 CCR 1007-3, § 261.32, with the hazardous waste code number K181. The K181 listing establishes annual mass loading levels for seven constituents of concern (aniline, oanisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, and 1,3-phenylenediamine). Wastes that exceed the limits must be regulated as hazardous waste, unless they are disposed in certain landfills or treated by certain combustion units. These amendments also establish land disposal restrictions (LDR) standards for the newly listed waste.

The commission also adopted corrections of typographical errors and inadvertent omissions to the regulations. These amendments corrected typographical errors and inadvertent omissions that existed in § 261.21(a)(3), Appendix VII to Part 261, Appendix VIII to Part 261, § 264.52(b), § 265.52(b), § 265.302(b), Appendix VI to Part 265, the table of treatment standards for hazardous waste at § 268.40, and § 279.52(b)(2)(ii) of the current regulations, and provide state equivalency with the applicable federal requirements.

The amendment of § 6.04 was made to revise paragraph (a) to reflect the current fiscal year 2006-2007 regarding the annual fees being assessed for this time period to fund the operation of the commission.

September 19, 2006

The commission adopted amendments to §§ 261.5 and 262.13 on September 19, 2006. At the May 16, 2006 rulemaking hearing regarding changes to the hazardous waste fee structure, the commission expressed concerns related to the new notification and fee requirements for Conditionally Exempt Small Quantity Generators (CESQGs) of hazardous waste that generated very small amounts of waste. The commission asked Hazardous Materials and Waste Management Division staff to review available information and make a proposal for a level of waste generation to which the notification and fee requirements would not apply. The Division's proposal exempted a CESQG that generated F001, F002, F004, and F005 wastes from the notification or fee requirements if three or fewer gallons of these type of wastes were generated a year. This is equivalent to about 25 pounds/year, or slightly less than 12 kilograms/year of liquid waste, depending on the waste's specific gravity and represents an average waste generation rate of 1 quart/month, but allows waste generators some flexibility and variance from the average rate throughout a calendar year. The Division was concerned about the F001, F002, F004, and F005 wastes because of their toxicity, prevalence at contaminated sites, and the low compliance rates in business sectors that commonly generate these wastes. The Division also testified at the May hearing that the intended targets of the notification and fee requirements were business users that consistently generate volumes of these wastes large enough to significantly affect public health and/or the environment, not the very small quantity users that may occasionally have need for small solvent volumes. The Division believed that a generation rate of 3 gallons/year provides an easily measured and convenient limit that will allow the very small generators, such as building maintenance operations, schools, and art studios, to be exempt from the notification and fee requirements but includes the large majority of businesses generating these waste streams in the problematic business sectors, such as dry cleaners, automotive shops, printers, and specialty paint shops. Because these sectors routinely exceed this amount, they will be subject to the notification and fee requirements. This outcome is in keeping with the Division's intent and removed the commission's original concerns.

At this meeting, the commission adopted the amendment of § 262.34(a)(2) (Tracking Accumulation Time for Tanks). Section 262.34(a)(2) of the Colorado Hazardous Waste Regulations (6 CCCR 1007-3) was amended to specify that the accumulation start date must be marked on both tanks and containers as follows: *§ 262.34(a)(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and either on or attached to each tank, or on a tank log sheet that is maintained at the facility and available for inspection upon request.* The existing regulations at § 262.34(a)(2) only addressed the marking requirement for accumulation of hazardous waste in containers, and did not require a generator who accumulated hazardous waste in a tank or tank system to mark the accumulation start date on the tank. This was inconsistent with the requirements for other accumulation units, and made it difficult for inspectors to verify that the on-site accumulation limit has been met. The purpose of this amendment was to help ensure that generators track the accumulation time for 90 or 180-day accumulation tanks so that waste is not accumulated in excess of the on-site accumulation time period. Modifying this regulation also ensured consistency with the requirement to track the accumulation start date for hazardous waste managed in containers, drip pads, and containment buildings.



Also at this meeting, the commission adopted the amendment of § 265.192 (Tank Requirements). Section 265.192 of the Colorado Hazardous Waste Regulations was amended to prohibit a large quantity generator of hazardous waste from storing hazardous waste in open top tanks. Part 265, Subpart CC, Air Emission Standards applicable to emissions from tanks, surface impoundments and containers, precludes the storage of hazardous waste with an average volatile organic concentration of 500 parts per million by weight in a tank that is open to the environment. However, there is no current requirement in the regulations prohibiting use of open-top tanks for storing non-organic hazardous wastes. The purpose of this amendment was to ensure protection of human health and the environment by minimizing potential releases of hazardous waste from overfills and overtopping of tanks from weather, as well as preventing evaporation of waste. The organic air emission regulations already prohibit the accumulation of organic hazardous waste in tanks that are not covered and free of gaps and cracks.

The commission also adopted the amendment of § 100.32 (Effective Date of Permits). Section 100.32 of the Colorado Hazardous Waste Regulations was amended at this time to make State RCRA permits effective thirty (30) days after being issued, irrespective of whether the associated fees have been paid. The purpose of §100.32(d) was to ensure timely payment of document review and activity fees at permitted facilities.

December 12, 2006

On December 12, 2006, the commission adopted amendments to §§ 260.10, 261.5(b) and 262.43 (Requirement for Submittal of Self-Certification Information). Sections 261.5(b) and 262.43 of the Colorado Hazardous Waste Regulations (6 CCCR 1007-3) were amended to require generators of hazardous waste, including conditionally exempt small quantity generators, to complete and return a self-certification compliance checklist upon request of the Division. A definition of a “Self-Certification Checklist” was also added to § 260.10 of the Regulations. The Division is in the process of implementing a self-certification program, which requires certain generators of hazardous waste to complete and return a self-certification compliance checklist. These checklists are the key element of the self-certification program and track a facility’s compliance with the hazardous waste regulations. The self-certification project, also known as the Environmental Results Program, is intended to build awareness within the regulated community of the applicable regulatory requirements by asking facilities to periodically review the requirements and certify that they are in compliance. This approach has many important advantages: 1) it is a very efficient method for improving compliance rates within our large universe of small and conditionally exempt generators, thus helping to level the economic playing field; 2) it allows precise targeting of follow-up compliance assistance; 3) it allows better targeting of enforcement by helping identify potentially recalcitrant, out-of-compliance facilities; and 4) it serves as a periodic refresher for facility personnel on applicable requirements. In the pilot self-certification projects already conducted by the Division, feedback from the regulated community has consistently been positive – they like the program, the effort is not burdensome, and the benefits are high. Experience with the program to date has demonstrated that it is much more effective if it is clear to the generator that completing and returning the form is mandatory, not voluntary. Therefore, to ensure that the self-certification process is effective and efficient, the amendments established mandatory requirements.

February 20, 2007

On February 20, 2007, the commission received several briefings from the division. These included the following: 1) Beneficial Re-use and Inert Material; 2) EPA Burden Reduction Rule; 3) Landfill

Ban Rule; 4) 2007 Solid Waste Legislative Initiative; and 5) Solid Waste Briefing. More information concerning these briefings can be obtained from the commission office or website listed below.

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 2007-2008

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 solid waste regulations and 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/>

If you have suggestions or comments please let us know.

For more information on the Colorado Solid and Hazardous Waste Commission or its Annual Report, please contact Karen Osthus of the Colorado Department of Public Health and Environment by phone (303) 692-3466 or by e-mail: karen.osthus@state.co.us or contact Laurie Perila by phone (303) 692-3467 or e-mail: laurie.perila@state.co.us



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