

STATE OF COLORADO

Bill Owens, Governor
Douglas H. Benevento, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

<http://www.cdphe.state.co.us>



Colorado Department
of Public Health
and Environment

February 2, 2005

The Honorable Joan Fitz-Gerald, President of the Senate
The Honorable Ken Gordon, Senate Majority Leader
The Honorable Mark Hillman, Senate Minority Leader
The Honorable Andrew Romanoff, Speaker of the House ✓
The Honorable Alice Madden, House Majority Leader
The Honorable Joe Stengel, House Minority Leader
Colorado State Capitol
200 East Colfax
Denver, Colorado 80203

Honorable Senators and Representatives:

Enclosed is a copy of the annual report to the General Assembly on the status of the hazardous waste control program in Colorado. Senate Bill 00-177 requires this report.

Sincerely,

Gary W. Baughman, Director
Hazardous Materials and Waste Management Division

Enclosure

LEGISLATIVE COUNCIL LIBRARY
048 STATE CAPITOL BUILDING
DENVER, COLORADO 80203-1784

KF
3946
A15
C65
2004

STATE OF COLORADO



Colorado Department
of Public Health
and Environment

**Fourth Annual Report to the Colorado General Assembly
on the
Status of the Hazardous Waste Control Program
in Colorado**

Submitted to the Colorado Legislature
by the Division of Hazardous Materials and Waste Management
Colorado Department of Public Health and Environment
February 1, 2005

DOCUMENT INFORMATION

Title: Fourth Annual Report to the Colorado General Assembly on the Status of the Hazardous Waste Control Program in Colorado

Principal Author: Joe Schieffelin, Hazardous Materials and Waste Management Division, Compliance Program Manager

Contributing Authors and Technical Assistance: Hazardous Materials and Waste Management Division:
Walter Avramenko, Hazardous Waste Corrective Action Unit Leader
Joyce Williams, Hazardous Waste Compliance Unit Leader
Frederick R. Dowsett, Compliance Coordinator
Joan W. Sowinski, Federal Facilities Program Manager

Subject: The report describes the status of the Hazardous Waste Control Program, and efforts to streamline the program so that it can be implemented at the lowest possible cost without jeopardizing the statutory intent.

Statute: Section ~~25-15-301.5~~(3), C.R.S.

Date: February 1, 2005

Number of pages: 16

For additional information or copies:

Joe Schieffelin, Compliance Program Manager
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
(303) 692-3356

INTRODUCTION

The state's Hazardous Waste Control Program is responsible for ensuring compliance with laws pertaining to the management of hazardous waste. The authority for this program is in the Colorado Hazardous Waste Act, 25-15-101 et seq., and the federal Resource Conservation and Recovery Act (RCRA). The U.S. Environmental Protection Agency (EPA) has authorized the Colorado Hazardous Waste Control Program, and by doing so, the authority to implement requirements for the management of hazardous waste in Colorado rests primarily with the state. Colorado was authorized for the base hazardous waste regulatory program in November 1984. In July 1989, federal authorization was granted to Colorado for significant additions to the base program that were created by the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act. One major element of that added authority was corrective action, which provided authority to investigate and clean up releases of hazardous waste constituents into the soil, surface water, or ground water at hazardous waste facilities.

Primary elements of the Hazardous Waste Control Program include compliance assistance; compliance monitoring and enforcement; corrective action; permitting; and information management. Each of these program elements is discussed in the following sections. In addition, there are sections discussing ongoing program authorization by EPA and the status of program funding.

As of December 2004, the Hazardous Waste Control Program regulates 34 treatment, storage and disposal facilities, 114 large quantity generators, 985 small quantity generators, 85 transporters and at least 3,307 conditionally exempt small quantity generators. The true number of conditionally exempt small quantity generators is not known, as they are not required to provide any notification to the state. The ones known are a result of voluntary notifications and complaint inspections.

The Colorado Hazardous Waste Act originally provided authority to assess cash fees only to the facilities that were required to have permits, which include all treatment, storage and disposal facilities. The revenue from these fees, combined with some grant money from EPA, provided adequate funding for the Hazardous Waste Control Program for many years. Colorado's only commercial hazardous waste disposal facility paid a large portion of these fees. However, as waste receipts at this facility declined substantially beginning in 1998, the resulting decrease in revenue to the Hazardous Waste Control Program created a serious funding shortfall.

To resolve the shortfall, the Hazardous Materials and Waste Management Division carefully analyzed the functions and structure of the program, convened a task force of stakeholders to obtain input on options to resolve the problem and pursued legislation concerning the authority to assess fees. One result of those efforts was passage by the General Assembly of Senate Bill 00-177. This legislation modified the Colorado Hazardous Waste Act by allowing the assessment of cash fees to generators of hazardous waste, not just treatment, storage and disposal facilities, and by clarifying the legislative intent regarding implementation of the program. The following report is submitted to comply with one provision of the legislation. SB 00-177 requires an annual report to the General Assembly beginning on February 1, 2002, describing the status of the Hazardous Waste Control Program and the efforts of the Colorado Department of Public Health and Environment to carry out its statutory responsibilities at the lowest possible cost without jeopardizing the intent of the statute.

ACCOMPLISHMENTS, IMPROVEMENTS AND INNOVATIONS

Since 2001, the Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division has streamlined processes, improved efficiency and found innovative ways to improve the Hazardous Waste Control Program.

Compliance Assistance

A goal of the Hazardous Waste Control Program is for all regulated facilities to be in compliance with state law and regulations. The traditional inspection and enforcement program serves as a primary mechanism for reaching that goal. In recent years, the program has recognized that compliance assistance also is an integral element for obtaining and maintaining compliance. In addition, regulated industry and the General Assembly recognized the value and importance of compliance assistance. One of the expectations set out in SB 00-177, at Section 25-15-301.5(2)(g), C.R.S., is for the department to "establish a preference for compliance assistance with at least ten percent of the annual budget amount being allocated to compliance assistance efforts." In FY 2001, FY 2002, and FY 2003, the program devoted approximately 16%, 16%, and 20%, respectively, of regulatory staff time to compliance assistance. In FY 2004, approximately 19% of staff time was devoted to compliance assistance.

The program has developed a broad range of compliance assistance services to assist the regulated community in managing hazardous waste. These compliance assistance services include:

- Full-time customer technical assistance phone line;
- Hazardous waste guidance documents and compliance bulletins;
- Development and maintenance of an extensive Web site;
- Compliance assistance site visits;
- Waste management training provided to industry; and
- Work groups, including program inspectors and technical staff and environmental managers from regulated entities, who review and develop regulations, guidance and training materials.

The division continues to develop additional services as more effective compliance tools are identified. We have put considerable effort into the content and useability of our website. All guidance and policy used by the Program can be down-loaded from the web site and, as a result, we have seen a significant decrease in the number of hard copies of items that are requested by outside entities.

During FY 2004, the Hazardous Materials and Waste Management Division provided 26 compliance-assistance training sessions to industry, which reached approximately 1,198 people. The training sessions covered a variety of topics, and included a focus on hazardous waste and environmental regulations. Much of the training is an outgrowth of sessions jointly developed by the Hazardous Waste Program and the Hazardous Waste Roundtable, a group of environmental managers from various facilities that handle hazardous waste. Initial

presentations of this training included Colorado Department of Public Health and Environment and local agency staff, as well as members of the regulated community.

Program inspectors routinely incorporate compliance assistance and pollution prevention into compliance inspection activities. Inspectors provide guidance documents to facilities during inspections as well as person-to-person advice. In FY 2004, the program conducted 73 site visits (discussed later under the Generator Assistance Program) that had compliance assistance as the major focus. In addition, compliance assistance was provided during 162 inspections.

The program maintains a system of guidance information for regulated parties through both print and electronic media. This includes an automated technical assistance telephone line for common waste management questions and a technical assistance line staffed during business hours to provide information for more complex or detailed regulatory guidance. Program guidance documents and compliance bulletins are available both in printed form and as electronic copies on the Hazardous Materials and Waste Management Division's Web page. The program will be expanding its electronic materials to include training modules that can be adapted for either computer-based training or classroom presentations.

During FY 2004, the Hazardous Materials and Waste Management Division's Internet homepage was extensively revised and updated. It received 659,967 hits, an 88% increase over the number from the previous year. In addition, Division technical assistance staff responded directly to 2,968 calls on the Customer Technical Assistance telephone line.

The compliance assistance staff also works on development of regulatory reforms that lessen the regulatory burden while maintaining environmentally effective controls. During FY 2004, the compliance assistance staff spent considerable time dealing with issues related to the management and recycling of hazardous waste electronics. Training during the year included emphasis on new rules for the management of electronic devices and components under the provisions for universal wastes so as to encourage recycling and reuse. The universal waste requirements are designed to be more flexible and less burdensome than full hazardous waste regulation.

Compliance Monitoring and Enforcement

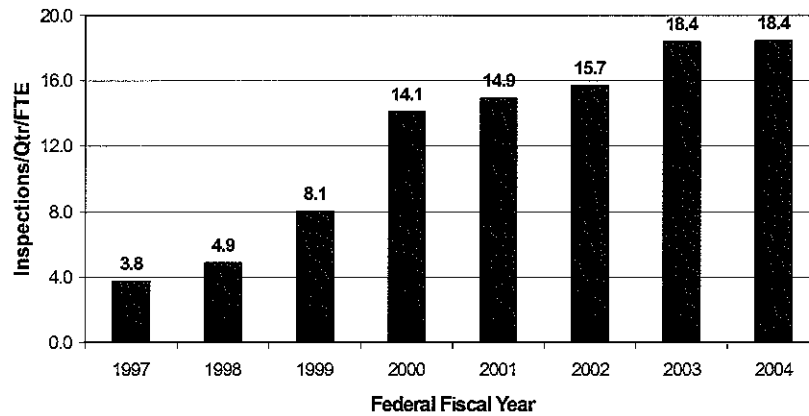
The Division believes that a high quality compliance monitoring and enforcement program should be able to demonstrate that it is both efficient and effective. Efficiency measures include such items as work output per employee and timeliness of activities, while effectiveness measures include improving compliance rates within the regulated community. Examples of these results are presented below.

An example of the improvements made in staff efficiency is presented in Figure 1. This graph illustrates the large gains in staff inspection efficiency that have occurred in recent years. The figure shows that current inspection efficiency is almost 94 percent higher than in 1999, and over 400 percent higher than in 1997. It should be noted that every inspection carries administrative

responsibilities, such as preparation of a report, tracking and data entry, all of which are also being performed on time and effectively.¹

FIGURE 1

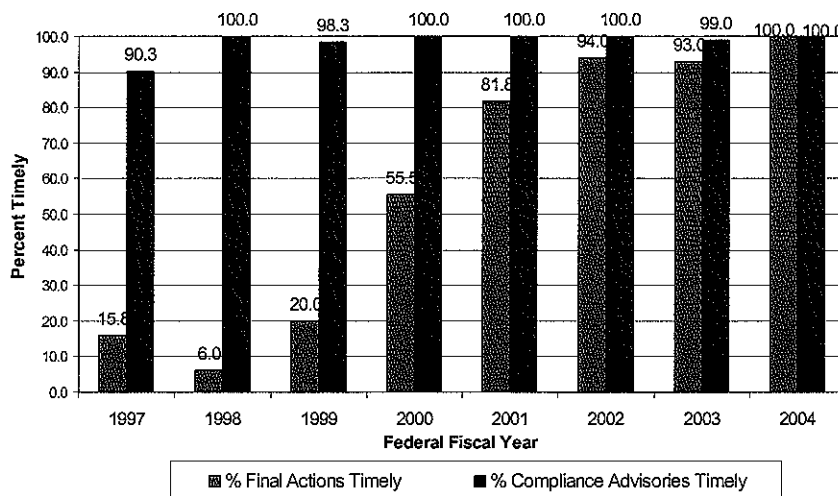
Inspector Efficiency



The higher number of inspections continues to result in the issuance of more formal and informal enforcement actions. Yet, as illustrated in Figure 2, even with more enforcement actions, the timeliness of formal enforcement actions, as measured against standards established by EPA and adopted by the Colorado program, has improved significantly. This graph shows that timeliness for informal actions has remained high and that timeliness for formal actions has improved substantially in the last few years. This is an example of significant improvements made in both staff efficiency and process efficiency. For the first time, all (100%) of the formal enforcement actions taken by the Division were timely.

FIGURE 2

Enforcement Timeliness



¹ As judged by EPA in their oversight role and recorded in their 1999 - 2003 End-of-Year Reports reviewing of Colorado's Hazardous Waste Program.

Substantial improvements to the division's data management systems and to operating procedures have greatly improved the division's management efficiency. The program is now collecting more useful management and project tracking data than was possible before 1999. Routine review and evaluation of the management reports that now can be generated has resulted in significant process streamlining. These efficiency gains in data management techniques are now being transferred to the Division's Solid Waste and Radioactive Materials programs.

The compliance monitoring and enforcement program can also show that it is being effective. For instance, for the 114 large quantity generators of hazardous waste, an annually updated inspection priority system has been developed and is being used to schedule these significant inspections. So far, the priorities are based on compliance history, but additional factors will be added to the system this year to include waste generation volume, waste type and waste toxicity. As can be seen in Figure 3, this prioritized emphasis on Colorado's Large Quantity Generators (LQGs) is having a demonstrable effect. Figure 3 shows that, for those LQG facilities where violations are discovered, the total number of violations has steadily decreased over the last several years. In addition, Figure 4 demonstrates that violations of regulatory requirements that have a direct relationship to environmental impacts and/or worker and public health impacts have also declined.

FIGURE 3

LQGs - # of Violations Per Compliance Advisory

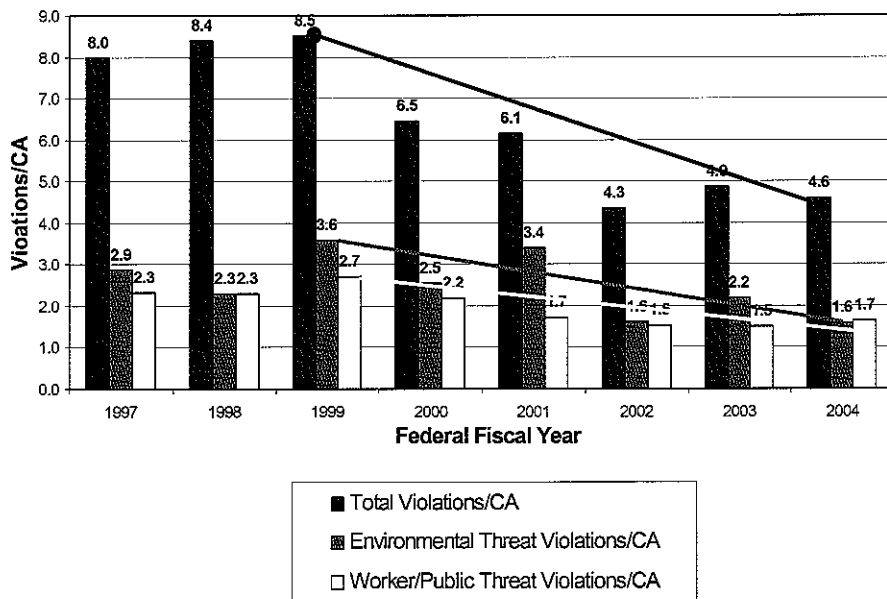
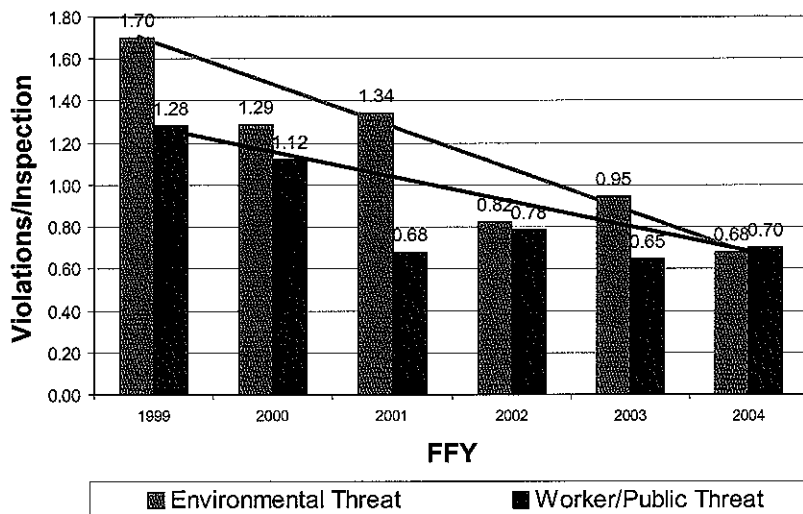


FIGURE 4

**Environmental Threat Violations and
Public/Worker Health Threat
Violations per Inspection
at LQGs - 1999 to 2004**



For the ~1000 Small Quantity Generators of hazardous waste in Colorado, we cannot show a similar improvement in compliance rates. We believe the reason for this is that we have been regulating these facilities in an inefficient manner. To solve this problem, we implemented two pilot projects to test potentially better regulatory methods. The first of these projects was called the Compass Project. Within the Compass Project, the Division tested whether direct mailings to facilities of a comprehensive and facility-specific set of compliance assistance materials had any measurable effect on improving compliance rates. The results of the Compass Project show that, with very few exceptions, direct mailings were *ineffective*.

The second project, called SCORE, was much more successful. The SCORE project tested whether self-certification and reporting of compliance by Small Quantity Generators to the Division was an effective and accurate method of measuring and improving compliance. Participants in the SCORE project were asked to fill out a compliance checklist, certify its accuracy, and submit it to the Division. Within 30 to 45 days of receiving a facility's self-certification, the Division sent its inspectors to the facility and they completed an identical checklist. The results of the facility's responses and the inspectors' responses were compared. Preliminary results suggest that there was a very large amount of agreement between the responses. In cases where the facility reported they were compliant, but the Division did not, the primary reason seems to be a misunderstanding of the regulatory requirement, not purposeful mis-reporting. Because of the success of the SCORE project, the Division is developing a SCORE 2 Project that will expand the self-certification program in FY 2005.

The Division has continued the Generator Assistance Program, or GAP. This program is aimed at small businesses, although any business may participate. GAP offers businesses an on-site evaluation of their hazardous waste management practices and suggests ways to improve and/or come in to compliance. In addition, GAP offers assistance with waste minimization and

pollution prevention opportunities. Any findings of non-compliance during a GAP site visit are given enforcement amnesty so long as the facility expeditiously corrects the problems and no immediate danger to human health or the environment is being caused by the violations. This program is increasingly popular with the regulated community, as it becomes more widely known. The GAP program has its own website: www.cdphe.state.co.us/hm/gap/gaphom.asp

Corrective Action

Corrective action has been a substantial part of the workload in the Colorado Hazardous Waste Program. Many improvements in the areas of efficiency and process streamlining continue to be implemented in the corrective action portion of the program. These improvements have been the result of a combination of regulatory and statutory changes, development of new guidance, improvements in the design of staff performance plans and increased management emphasis on process times. The result of these improvements has been a very tightly managed program that has performed significantly better than the national average and which has, in fact, been able to project with relatively high confidence when all major hazardous waste cleanups in Colorado will be complete.

The most significant process improvement continues to be the use of the Corrective Action Plan process, a relatively new regulatory mechanism for initiating corrective action at facilities. Previously, oversight of environmental clean-up activities under the corrective action program required either a hazardous waste permit or a compliance order. Both of these processes are lengthy and resource-intensive for facilities that only need to conduct clean-up activities. Under the new provision, a facility may submit a "Corrective Action Plan" to the Hazardous Waste Control Program. Once approved, the Corrective Action Plan works very much like, and is enforceable as, either a permit or an order. However, since using this approach is voluntary for the facility, it can be implemented much more quickly than either of the other mechanisms, and requires fewer resources. It continues to be a popular mechanism among industries that are regulated by the department and it has streamlined the program substantially.

In conjunction with the Corrective Action Plan (CAP) mechanism, guidelines were put in place for level of effort and total elapsed time associated with reviewing documents submitted under Corrective Action Plans. These guidelines have been useful to both managers and staff in assessing our efficiency and the program has been successful in meeting its targets. Figure 5 shows the average total elapsed time (from document submittal by a facility to Division review and feedback to a facility) as compared to the target levels for various types of documents. Figure 6 shows similar information for the actual review time (actual hours spent by Division staff reviewing each document).

FIGURE 5

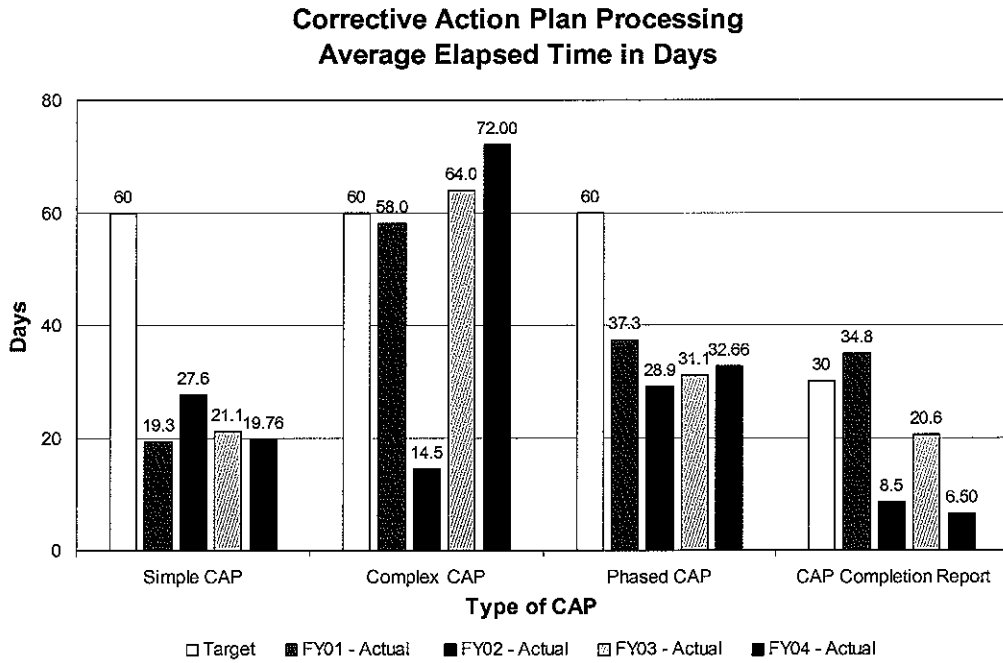
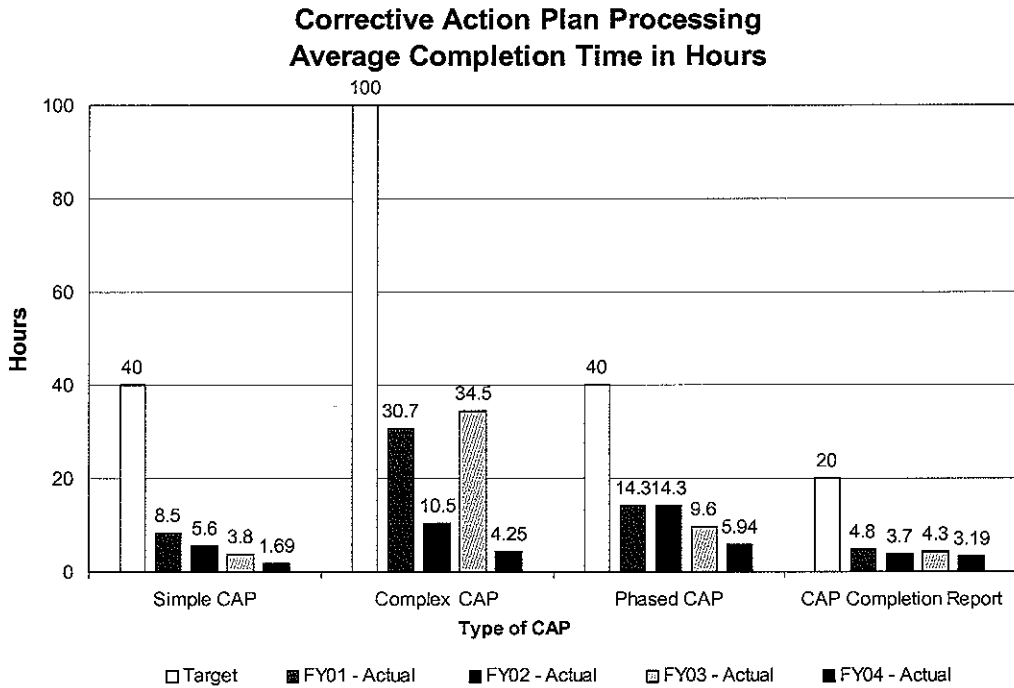


FIGURE 6



The data for FY 2004 show that process improvements continue to improve the efficiency of the program and have streamlined the clean-up process. Staff reviews of documents were all

completed well within the targeted timeframes, with the exception of the number of days taken to process Complex CAPs. The total time that staff spent working on the reviews was well under the target time for all categories of documents and continues to improve.

Implementation of the review time targets has resulted in higher productivity. In fact, this higher productivity has resulted in workload and staffing peaking in FY 2003, and a decline in staffing beginning in FY 2004. Further staffing declines are anticipated for FY 2005. Figure 7 compares the number of corrective action reviews completed with the number of corrective action staff, and Figure 8 shows the number of plan or report approvals per FTE over several years. Figure 7 actually shows a decrease in the number of reviews completed from FY 2001 through FY 2004. When considered together with Figure 8, which shows an increase in report approvals per FTE, the information demonstrates that there are fewer reviews necessary for each report approval. That information indicates that the quality of documents being submitted for review is improving, possibly as a result of better guidance and communication Department staff are providing the willing participants of the corrective action process. However, this information also shows that corrective action reviews (workload) is declining, staff efficiency continues to improve, and the result is the need for fewer staff. As indicated on Figure 7, the Division reduced corrective action staff by almost a full FTE and anticipates another ~0.5 FTE reduction in FY 2005.

FIGURE 7

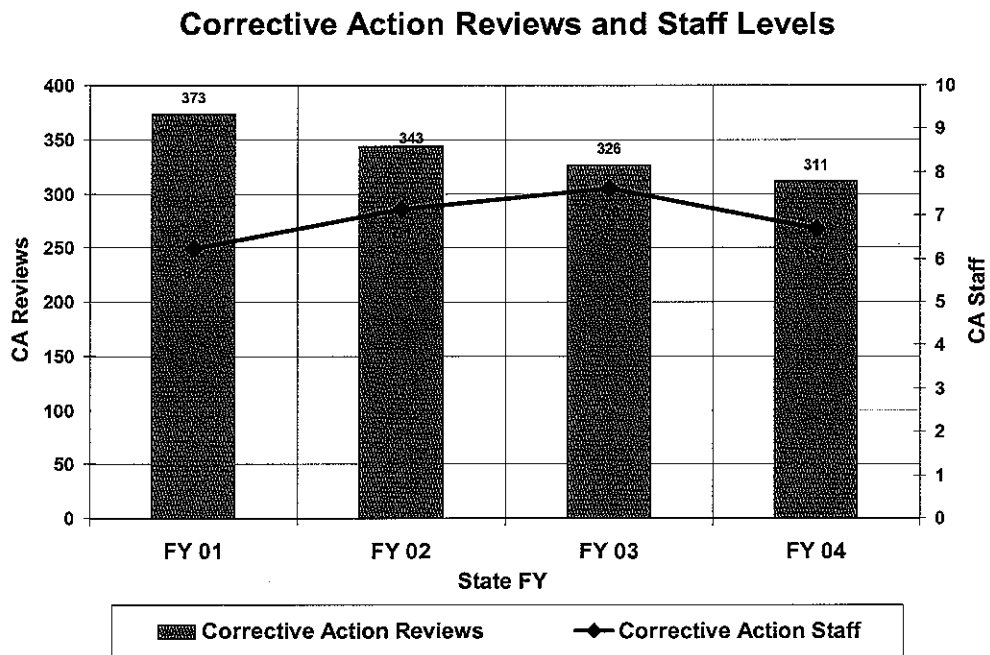
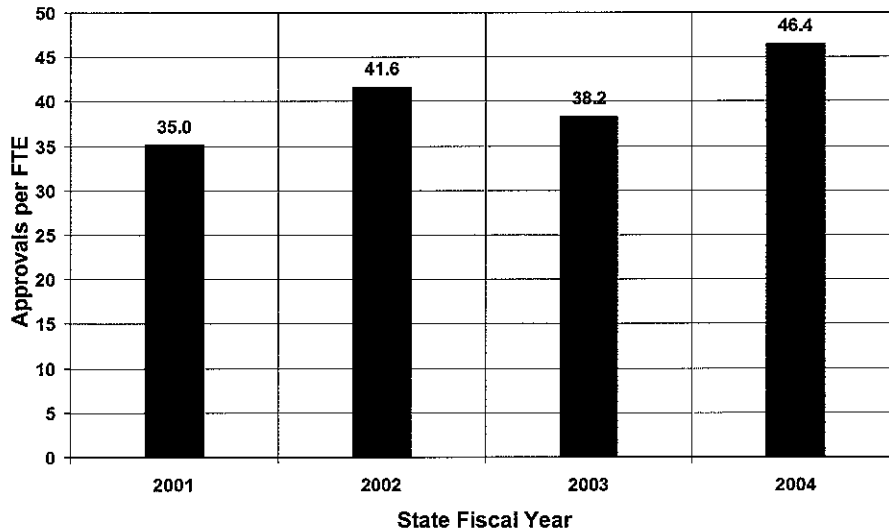


FIGURE 8

**Corrective Action Program
Plan and Report Approvals**



Because review data was not collected previously on a document-specific basis, the division does not have specific data to show how the review time for specific documents has improved for prior years. However, the improvement in overall productivity indicates that time spent on each document has been reduced. The division now is tracking document-specific review times and has begun applying the specified review timeframes established under the Corrective Action Plan process to all sites, including those regulated under different mechanisms.

A significant factor in the time that it takes staff to review a clean-up document is the overall quality of the document that is submitted for review. This appears to be the result of several factors. The first is the regulated community's use of the Department's May 2002 Corrective Action Guidance Document in which clear corrective action goals, expectations and strategies that focus on flexibility and environmental results are presented. One of the most often used elements of this guidance is a description of a process whereby risk-based methods allow for the reclassification of contaminated media from a hazardous to solid waste, thereby reducing disposal costs and promoting more thorough cleanups. The second improvement involves early and more frequent communication between the Department and regulated community, resulting in the resolution of difficult issues before they have the opportunity to become obstacles that may stand in the way of completing necessary work. Improved communication leads to a trust relationship that promotes a collaborative approach to cleaning up sites. Striving for common objectives leads to the development of work plans that are more easily approved.

One of the expectations expressed by the General Assembly in SB 00-177, as part of streamlining the corrective action process, was that the Hazardous Waste Control Program should use enforceable institutional controls and consider such controls in determining clean-up standards. A serious concern for the program at the time was lack of an authority to enforce institutional controls. That problem was resolved with the passage of Senate Bill 01-145. This

bill created an environmental covenant, which provides a mechanism for property owners to establish certain restrictions or conditions for their properties, and for those restrictions or conditions to be enforceable by the Colorado Department of Public Health and Environment. Since then, the Hazardous Materials and Waste Management Division has begun to approve long-term clean-up plans that rely on environmental covenants to manage risks associated with residual contamination, thereby avoiding the difficulty and expense of remediating sites down to unrestricted use levels. To date, accomplishments include:

- A registry of sites has been created as required by the statute; currently, there are nine sites on the registry and several others are likely to be added soon.
- Staff of the Colorado Attorney General's Office has developed model covenant language.
- The Hazardous Materials and Waste Management Division's Geographic Information System (GIS)-based map Web page has been implemented, the sites with covenants have been included, with a link to the covenant. This allows the public to have access to the information.
- After meeting with several local governments to discuss communication and implementation issues, the Hazardous Materials and Waste Management Division has drafted and made available to the public a guidance document on what covenants are, the opportunities they offer, what is needed to create a covenant, and the tracking and notification responsibilities of the State and local governments. This guidance document, along with other covenant related support documents, is presently available on the Division's Web site.

The Hazardous Waste Control Program also continues to be a leading contributor to national efforts to streamline the corrective action process through active participation in the Interstate Technology and Regulatory Cooperation Work Group. This is a national organization led by state regulators with the purpose of streamlining the regulatory process associated with approving the use of innovative technologies in cleaning up environmental contamination.

The Program has not only accelerated the movement of sites towards remediation and closure, efficiency improvements have also provided staff with the time necessary to manage the historic backlog of sites either requiring clean-up or that simply need to be administratively closed. Program staff is actively engaged overseeing clean-up activities at all sites subject to corrective action, regardless of whether they are of high or low priority. New sites brought to our attention are addressed promptly. Staff has also had the time to research historic sites that were identified in the system databases as still being "open" and active, when in reality corrective action has long been completed. Files for these open cases have been reviewed and the tracking system updated to correctly reflect the fact that clean-up process has been terminated at many of them. This database clean-up exercise has also identified a small number of sites that require additional work before a no further action determination can be made, prompting us to contact the facility and resume the clean-up process with the goal of being able to make such a determination at a later date.

The U.S. Environmental Protection Agency has established two national environmental indicators to measure progress of the hazardous waste corrective action program. This approach was established as part of the Government Performance Results Act, and measures "Human Exposures Under Control," and "Ground Water Releases Under Control" at a defined group of

high priority facilities around the country. In Colorado, there are 31 of these high priority facilities. The Department continues to exceed the national targets for progress in both indicators as shown in Figures 9 and 10.

FIGURE 9

Human Exposures Under Control

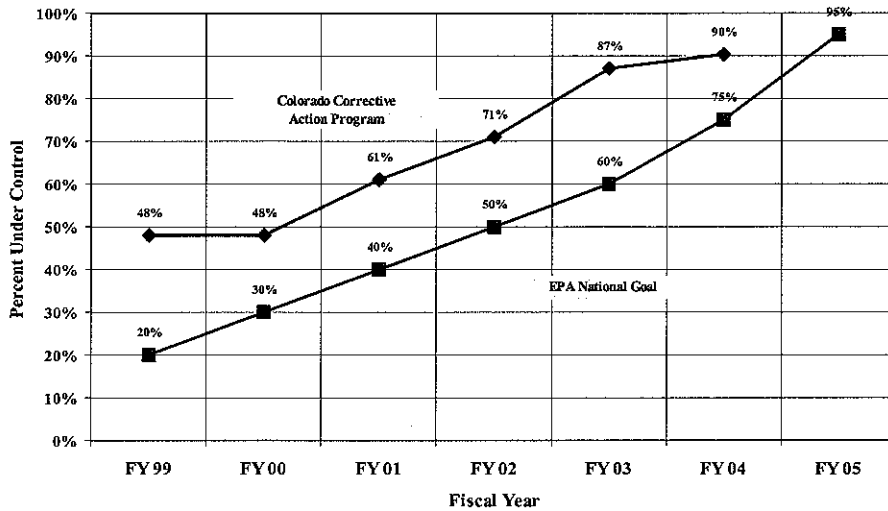
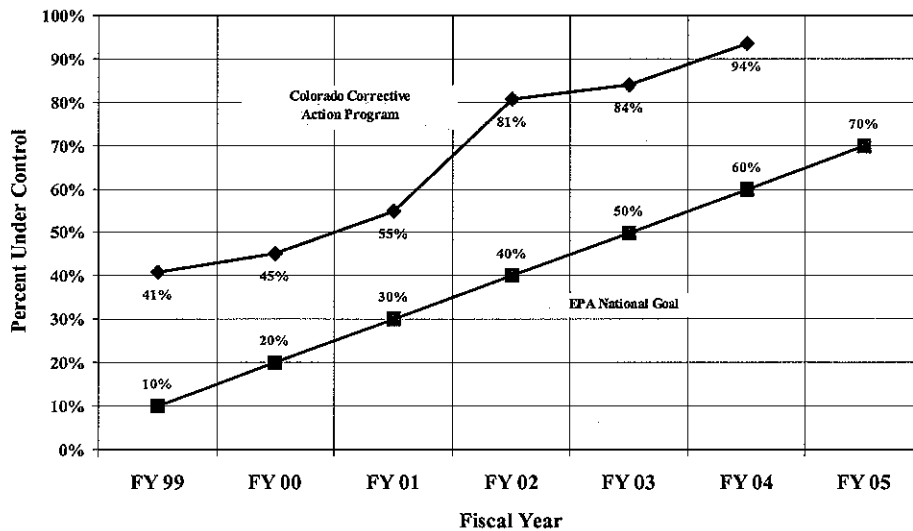


FIGURE 10

Ground Water Releases Under Control



Permitting

The permitting workload for the Colorado Hazardous Waste Program has continued to decline over the past several years. Facilities that manage hazardous wastes in a manner that requires

permitting by the Colorado Hazardous Waste Program are referred to as treatment, storage or disposal facilities (TSDFs). At present, there are 34 of these facilities in Colorado, but only 12 of those are required to have a permit. The remainder are in the process of closing the activities and/or equipment that would have required a permit. Much of the closure work is being done in conjunction with the corrective action work at these facilities.

Colorado has operating permits in place at all facilities that currently require them. The state is ahead of EPA's national targets for having "operating controls in place," which targets that 100% of the needed permits be issued by 2005. In addition, there are 14 facilities in Colorado that require post-closure controls. The Division has taken advantage of some flexibility afforded by EPA nationally by adopting a provision that allows certain compliance orders to substitute for post-closure permits. For those facilities that do not require permits for any other aspects of their facility, the "post-closure order" is a more efficient approach. Again, Colorado has moved ahead of EPA's national targets for having post-closure controls in place with 93% completed, as compared to the national target of 74% by this time.

The department continued its participation in the national Interstate Technology and Regulatory Cooperation (ITRC) Work Group, mentioned above regarding the corrective action program. This group supports streamlining the permitting process. Again, the purpose of that effort is to reduce regulatory barriers associated with approving the use of innovative technologies to clean up contaminated sites. The approval of these technologies typically involves some version of a permitting process.

Information Management

The division has made a substantial effort over the past few years to improve data evaluation and turn it into useful information. Some of the data presentations in this report are a continuing part of that effort. Internally, the division has been able to develop a data management system that has enabled effective tracking of all inspections and any following enforcement actions; and to retrieve reports that provide managers with an up-to-date overview of cases. This information allows the division to be more effective in the use of program resources and accomplish the highest priority activities.

The division also is able to track how much time and effort is spent on different aspects of work. Improvements in the billing system allow tracking of staff time spent on review of a specific document. This improves managers' ability to identify areas that are consuming significant amounts of time, and allows decisions to be made to make appropriate improvements. It also improves the division's ability to be accountable to those paying fees by better identifying how the money they pay is used.

Management of data is an important issue for EPA in the national hazardous waste program. Because most states are authorized to implement most of the hazardous waste program, managing data regarding the status of the program nationally is complex. Colorado's capability with these data systems was acknowledged by EPA's invitation to participate on the National Design Team for EPA's national hazardous waste data system (RCRAInfo). Because of this, Colorado has advanced beyond many states in the division's ability to manage such information.

Maintaining Authorization

One of the key values held by the regulated community, and one of the legislative directives from SB 00-177, was that Colorado “maintains program authorization by the federal government.” When EPA goes through the process of authorizing a state for the hazardous waste program, it carefully reviews the state’s authorities, regulations, funding and staffing, both quantitatively and qualitatively. Once the state is authorized, EPA monitors the state program to ensure that it is being implemented in a manner that satisfies the federal program requirements.

When the fee revenues to the Colorado Hazardous Waste Program dropped substantially in 1998, EPA initiated a capability assessment of the program to review whether the resources to implement the program were adequate to maintain authorization. EPA issued a report in April 1999, which stated that the resources available to the Colorado program, both in funding and in number of staff, were not adequate. A significant basis for this finding was a comparison of the Colorado resources with those in Utah and North Carolina, two other states with comparable numbers of hazardous waste facilities. At the time, cash revenues had dropped to the point where, without an increase in revenue, the division would not have been able to maintain a viable program. The passage of SB 00-177 created a new fee for generators of hazardous waste. A significant amount of program resources is devoted to inspecting and providing compliance assistance to generators, yet they were not paying a fee to the program.

EPA updated its capability assessment in a capability status report dated May 3, 2001. In this report, EPA stated that Colorado’s program had made significant progress since April 1999 in its ability to meet commitments made to EPA in the annual work plan. However, EPA expressed concern about the overall pace of the corrective action program, and it noted continuing concern that the available financial and staff resources may not be sufficient to maintain an adequate program.

Hazardous Waste Control Program managers felt that the resources available with the new generator fee were adequate, and asked EPA to shift more focus to performance rather than comparisons to other states. EPA agreed to use that approach, and focused its review on performance in the year that ended September 30, 2001. Based on the results of that review, EPA issued a new capability assessment report dated April 2002. This report concluded that Colorado’s program has made significant program improvements and realized considerable resource increases since the 1999 capability assessment, and declared that Colorado is capable of operating a fully authorized hazardous waste program. The report also noted that additional revenue would be necessary in the future due to inflation, and that it is unlikely that EPA will be able to provide increased funding to the program.

All of EPA’s concerns about program authorization were resolved by mid-2003 and in November 2003, EPA published a notice in the Federal Register adding most of the backlogged regulatory provisions to Colorado’s authorized program. Currently, the Hazardous Waste Control Program has adopted 100% of the necessary EPA regulations and is ~75% authorized by EPA. The Division has submitted new authorization information to EPA for changes made in our regulations in 2003 and 2004. When the 2003 and 2004 additions are authorized by EPA (expected in 2005), the Program will be very close to 100% authorized.

Program Funding

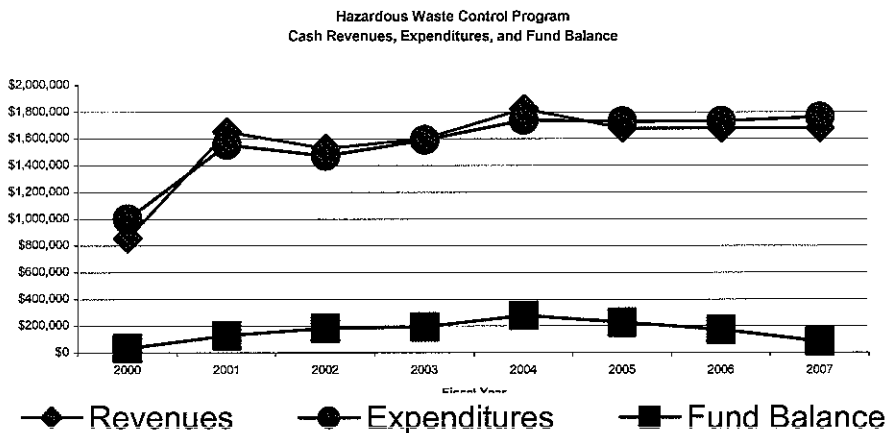
Cash fees and an annual grant from EPA fund the Colorado Hazardous Waste Control Program. Initially, the cash fees were paid by permitted hazardous waste treatment, storage, and disposal facilities. This fee structure was adequate for many years, but in 1998, the only commercial hazardous waste landfill in Colorado experienced a significant decline in business, which resulted in a marked decline in fees to the program. This caused a significant funding shortfall which gave rise to passage of SB 00-177, which changed and stabilized the fee structure. The annual grant from EPA has continued; however, the amount of funding remained essentially unchanged from 1995 until 2001, when it was increased by about 15 percent. Since 2001, it has again remained flat.

SB 00-177 created a generator fee to broaden the funding base for the program. Those changes, together with further modifications to the program's fee structure that were approved by the Colorado Hazardous Waste Commission in February 2003, have provided adequate funding for the program.

Figure 11 illustrates the cash revenue, the cash spending, and the cash balance in the Hazardous Waste Service Fund from 2000 through 2007. This figure shows that the program is striving to balance revenues and expenditures and maintain a small fund balance. The present fee structure is expected to fund the program adequately through at least FY 2006, which was the objective of the changes made in February 2003.

The Division's successes in improving efficiency are clearly presented in this report. Significant improvement has occurred and is continuing to occur in an effort to further improve efficiency and reduce costs. However, increases in costs have occurred and are projected to continue as a result of inflation. The projections presented in Figure 11 do account for inflationary cost increases, though the existing fee structure does not compensate for cost increases as a result of inflation.

FIGURE 11



CONCLUSIONS

As discussed in this report, the Hazardous Materials and Waste Management Division has implemented significant improvements to the Hazardous Waste Control Program to satisfy the expectations set out by SB 00-177 (Section 25-15-301.5, C.R.S). These expectations include:

- 1) the program will maintain its authorization by the federal government;
- 2) that it is credible and accountable;
- 3) that it is innovative and cost-effective;
- 4) that it will develop level-of-effort guidelines for inspections, enforcement, and corrective action;
- 5) that it will streamline the corrective action process;
- 6) that it will prioritize activities based on risk; and
- 7) that it will emphasize compliance assistance efforts.

This report explains how these statutory expectations have each been met.

As a result of the efforts undertaken by the Hazardous Waste Control Program, both the effectiveness and efficiency of the Hazardous Waste Control Program have been significantly improved. Major program accomplishments include the following:

- Placing an emphasis on compliance assistance by devoting approximately 20 percent of regulatory staff time to compliance assistance activities;
- Dramatically increasing inspection efficiency since 1999;
- Substantially improving timeliness of enforcement actions over the last four years;
- Streamlining the corrective action process using the Corrective Action Plan provision;
- Developing and meeting level-of-effort and total time guidelines for reviewing corrective action submittals;
- Significantly improving the efficiency of corrective action staff; and
- Exceeding national goals set by the U.S. Environmental Protection Agency for corrective action and permitting.

The Hazardous Waste Control Program has successfully demonstrated to the U.S. Environmental Protection Agency that the current levels of staff and funding are adequate for Colorado to maintain an authorized hazardous waste program.

Further efforts will continue in order to improve the Hazardous Waste Control Program. The generator fees authorized by SB 00-177, and adjusted by the Colorado Hazardous Waste Commission in 2003, have stabilized revenue to the program. When combined with the efficiency improvements, these fees will provide adequate funding for the program through FY 2006.