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AGENDA: Getting a Handle on Hazardous Waste Control

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Getting a Handle on Hazardous Waste Controls

June 9-10, 1986

Monday, June 9, 1986
8:30 a.m. Registration and coffee
9:00 a.m. Welcome
Dean Betsy Levin, Prof. James N. Corbridge, Jr.
Lawrence J. MacDonnell
9:15 a.m. A RCRA Overview
Gene A. Lucero, Director, Office of Waste Programs Enforcement, Environmental Protection Agency, Washington, DC
The speaker will present a review of new and planned changes in regulations and policy, and a discussion of enforcement initiatives and implications for the future.
10:00 a.m. The New Small Quantity Generator Rules: RCRA Reaches Small Business
Hal Winslow, Winslow & Associates, Denver, Colorado
Small and medium businesses with little prior experience in environmental regulation now must comply with RCRA's new Small Quantity Generator Requirements. The speaker will discuss what is involved, what issues and needs are raised, and how can they be addressed
10:30 a.m. Break
10:50 a.m. 1984 Amendments: Land Disposal Limitations
James R. Spaanstra, Hultin & Spaanstra, Denver, Colorado
The federal Hazardous and Solid Waste Amendments of 1984 (HSWA) contained a number of important provisions intended to severely limit the future land disposal of untreated hazardous wastes. EPA has now begun to implement these provisions. The speaker will review the progress the agency has made to date in implementing the HSWA land disposal ban provisions and will assess the impact of these provisions on future hazardous waste management practices.
11:20 a.m. Underground Storage Tank Regulation
J. Kemper Will, Hill & Robbins, Denver, Colorado
The 1984 amendments extended regulation to underground storage tanks. This presentation will address what tanks are covered and what rules apply, including a survey of risks, technologies, strategies, and procedures.
11:50 a.m. Lunch
Speaker: John G. Welles, Regional Administrator, Environmental Protection Agency, Region VIII, Denver, Colorado

Hazardous Waste Regulation: Where We Stand
Regulating hazardous waste is increasingly complex, especially with the jurisdiction being divided among the local, state and federal levels of government. Building understanding among the public and the news media of how the system works, and especially of the risks involved, is essential to successful waste disposal.
1:30 p.m. Reduction of Hazardous Waste: Pay Me Now or Pay Me Later
Frank B. Friedman, Vice President, Occidental Petroleum Corporation, Los Angeles, California
Environmental management must focus on permits and on process. The most cost-effective approach is to focus on the process; namely to avoid the permitting issues by changing the engineering. Occidental has been focusing on the process by first obtaining an inventory of solid wastes, emissions, and effluents and then using such inventories as a means of prioritizing methods of reduction. The speaker, a lawyer and a manager, will describe Occidental's successful techniques in managing hazardous wastes as a case study.
2:15 p.m. Colorado's Hazardous Waste Program: Current Activities
Richard L. Griffith, First Assistant Attorney General, Natural Resources Section, State of Colorado
This presentation will discuss current activities and issues in the state's hazardous waste program, including enforcement procedures and strategies, settlement policies, the status of the 1984 Amendments, and the relationship between EPA and the state.
2:45 p.m. Break
3:05 p.m. An Evaluation of RCRA
David Lennett, Staff Attorney, Environmental Defense Fund, Washington DC
The speaker will examine recent trends and regulatory activities to determine if they are consistent with statutory mandates and policies.
3:50 p.m. Panel: Questions and answers involving earlier speakers
5:00 p.m. Reception on the lawn
Tuesday, June 10, 1986

9:00 a.m. Panel: The New CERCLA Amendments—What Are They? What Do They Mean?
David R. Andrews, McCutchen, Doyle, Brown & Enersen, San Francisco, California
Phillip T. Cummings, Counsel, Senate Committee on Environment and Public Works, Washington, DC
Maggie Fox, Sierra Club Southwest Office, Boulder, Colorado
Alan J. Gilbert, Sherman & Howard, Denver, Colorado
Gene A. Lucero, Environmental Protection Agency, Washington, DC

In September 1985, the Senate passed voluminous amendments to CERCLA. In December, the House of Representatives enacted its own bulky version of the amendments. Both bills contain important clarifications of CERCLA and work important changes. Though deep disagreement over taxing mechanisms and other issues has stalled a conference, indications from Congressional leaders are that a conference committee will be active throughout March and April. Depending upon the legislative status of the amendments on June 10, this panel will discuss a law, a conference agreement, or separate congressional versions of Superfund amendments.

10:30 a.m. Break

10:50 a.m. Update on CERCLA Litigation and Settlements
Stephen D. Ramsey, Sidley & Austin, Washington, DC

This presentation will include a discussion of the implementation of the government’s CERCLA Settlement Policy, developing and protecting an administrative record in the CERCLA process, and government and industry litigation strategies and techniques. As EPA gains experience with its settlement policies, some innovative approaches to settlement are beginning to develop. EPA is taking the position that review of its remedial decisions should be based on an administrative record using traditional administrative law principles. The presentation will focus on these issues, particularly with respect to EPA’s implementation of CERCLA and its approach to CERCLA litigation.

11:40 a.m. Natural Resources Damage Litigation
Michael Donovan, Colorado State Attorney General’s Office, Denver, Colorado

The speaker will discuss the provisions of CERCLA addressing natural resource damages, the implementing regulations, and current litigation in this area.

12:15 p.m. Lunch (on your own)

1:45 p.m. Panel: Lowry Landfill
John D. Faught, John D. Faught, PC, Englewood, Colorado
Timothy R. Gablehouse, Adolph Coors Company, Golden, Colorado
Sharon Metcalf, Environmental Protection Agency, Denver, Colorado
Lauren Stiller Rikleen, Clean Sites, Inc., Alexandria, Virginia
Linda L. Rockwood, Holland & Hart, Denver, Colorado

3:00 p.m. Break

3:20 p.m. EPA Regulation of Mining Wastes
Rob Walline, Chair, EPA Agency-wide Mining Waste Work Group, Denver, Colorado

The presentation will discuss the current status of the RCRA mining waste regulation development. In addition the existing CERCLA mining waste site activities will be highlighted. The presentation will conclude with mining waste aspects of CERCLA reauthorization and a discussion of what the future holds for EPA activities related to mining wastes.

3:50 p.m. The Revised Definition of Solid Waste
John D. Fognani, Holland & Hart, Denver, Colorado

The speaker will present an overview of EPA’s definition of solid wastes and its reuse/recycle rules, and an attempted understanding of their regulatory consequences for the mining and mineral processing industry.

4:20 p.m. Questions and Discussion—Mine Waste Regulation

4:40 p.m. Program conclusion
GETTING A HANDLE ON HAZARDOUS WASTE CONTROLS
June 9-10, 1986

CONFERENCE CHAIRMAN

LAWRENCE J. MacDONNELL (B.A. Political Science, University of Michigan, 1966; J.D. Natural Resources Law, University of Denver College of Law, 1972; and Ph.D. in Mineral Economics, Colorado School of Mines, 1974) became Director of the Natural Resources Law Center in November 1983. Prior to that he was a research economist at the Denver Research Institute and Adjunct Professor at the Graduate School of Business and Public Management at the University of Denver, 1980-83. He has served as a consultant to the Colorado Office of Energy Conservation, as an instructor and course director for the Colorado Outward Bound School, as Assistant Professor in the Dept. of Mineral Economics at the Colorado School of Mines, and as a Special Consultant to the Interior and Insular Affairs Committee of the U.S. House of Representatives. He is a member of the Colorado Bar Association and the Association of Environmental and Resource Economists.

CONFERENCE FACULTY

DAVID R. ANDREWS splits his time between the Washington, DC office and the San Francisco office of McCutchen, Doyle, Brown & Enersen, managing that firm's environmental practice which has 21 lawyers. His practice includes representation of clients with respect to air, water, Superfund, RCRA, toxic substance and pesticide matters, as well as Washington representation of clients with respect to matters before EPA and the Dept. of Interior, and legislative matters before Congress. He served as Regional Counsel for EPA, Region IX (1975-77), Legal Counsel and Special Assistant for Policy at EPA in Washington (1977-80), and Deputy General Counsel and acting General Counsel of the Dept. of Health and Human Services (1980-81). He is a director of the Environmental Law Institute, a Washington, DC non-profit research institute, a former member of the State Bar Committee on the Environment (1981-85), and is a Vice-Chairman of the ABA Natural Resources Section Committee on Hazardous Waste.
MICHAEL C. DONOVAN (B.A. magna cum laude, Northeastern University, '73; graduate work, Harvard University; J.D. University of Notre Dame, '78, Editor, Law Review and staff member of the Notre Dame Journal of Litigation) is currently an Assistant Attorney General with the CERCLA Litigation Section of the Colorado Dept. of Law where he serves as senior trial counsel in several of the state's 7 pending CERCLA cases, including The Rocky Mt. Arsenal litigation (i.e. State of Colorado v. United States and Shell Oil Co.) Since his graduation from law school he has practiced exclusively in the area of complex civil and criminal litigation, primarily in the civil rights and environmental areas. He served as lead counsel for the State of Ohio in the seminal CERCLA case of U.S. and State of Ohio v. Chem-Dyne Corp., et al., 572 F. Supp. 802 (S.D. Ohio, 1984). In addition he successfully prosecuted the State of Ohio's first hazardous waste criminal case.

JOHN D. FAUGHT (B.S. in Electrical Engineering, University of Nebraska, Lincoln; J.D.- University of Texas School of Law, '71) started his own law firm in 1984 after being with Welborn, Dufford, Brown & Tooley for eight years. His work for the last six years has been primarily in the environmental field, including RCRA and CERCLA. In these areas he has represented a number of companies in matters including legislation, agency rule-making, permitting, administrative enforcement actions and litigation. He is currently involved with Lowry Landfill issues. He had extensive litigation experience while a member of the Navy Judge Advocate General's Corps, including civil litigation in federal district court, as well as criminal litigation.
JOHN FOGNANI is a graduate of Northwestern University Law School in Chicago and a partner in the law firm of Holland & Hart. For the past several years, he has been actively involved in the practice of environmental law, representing the mining and petroleum industries on environmental issues and, in particular, on issues involving RCRA and CERCLA. His topic for this conference is not on a CERCLA issue, but rather on EPA's revised definition of solid waste and its reuse/recycle rules under RCRA, which he claims can be read and understood only if one has a sense of humor and a basic tendency to masochism.

FRANK B. FRIEDMAN (A.B. Columbia College, '62; J.D. Columbia Law School, '65) has been Vice President for Health, Environment & Safety for Occidental Petroleum Corp. in Los Angeles since 1981. Previously he served with Atlantic Richfield and its subsidiary ARCO Chemical Company as Manager, External Affairs, Occupational and Environmental Protection (1979-81) and as Director, Environment, Health & Safety (1978-79). Prior to joining Atlantic Richfield he was an attorney in the Appellate Section, Land & Natural Resources Div., U.S. Dept. of Justice. He has held several offices in the ABA Natural Resources Section and is presently a member of the Executive Committee of the Board of Directors of the Environmental Law Institute and a member of the American Law Institute. He has written and lectured extensively on environmental and mineral law subjects, including a forthcoming practical guide to environmental laws. He has also taught environmental law at Temple University Law School and lectured at Columbia and UCLA Law Schools.
TIMOTHY R. GABLEHOUSE (B.A. Environmental Biology, University of Colorado-Boulder, '73; J.D. '75 and M.B.A. '81, University of Denver) is Managing Attorney for Regulatory Affairs with the Adolph Coors Company of Golden. He is currently President of the Colorado Hazardous Waste Management Society; Chairman of the National Association of Manufacturers' Water Quality Task Force; Chairman of the Colorado Dept. of Health's Highway 36 Monitoring Committee; and Co-chair of the Lowry Landfill Industry Steering Committee.

ALAN J. GILBERT obtained a B.S. in mechanical engineering, magna cum laude, from Brown University in 1973, where he was a member of Tau Beta Pi, an honorary engineering organization, and Sigma Xi, an honorary scientific society. After working for the U.S. EPA as an engineer assigned to the air pollution control program, he received a J.D. magna cum laude, from the University of Michigan Law School in 1977. He specializes in environmental regulation related to mineral development at the law firm of Sherman & Howard in Denver. He has co-authored two papers on air pollution in New England; teaches "Environmental Regulation of the Energy Industries" at the Denver University Graduate School of Business Administration; and serves on the Environmental Law Advisory Committee of the National Chamber of Commerce Litigation Center. He served on a committee which revised the procedural rules of the Colorado Air Quality Division, and has spoken widely to academic and other groups on various environmental law topics.
RICHARD L. GRIFFITH (B.A. Oberlin College, '75; J.D. University of Colorado, '78, receiving the American Jurisprudence Award in Contracts) has been First Assistant Attorney General for Colorado since 1980, representing the Waste Management Division, the Water Quality Control Commission, the Radiation Control Division, and Air Pollution Control Division of the Dept. of Health, the Mined Land Reclamation Division of the Dept. of Natural Resources, and the office of Energy Conservation. From 1977-80 he was Natural Resources Attorney for the Western Interstate Energy Board, Denver. He is Secretary/Treasurer of the Environmental Law Section of the Colorado Bar Association, and a member of the Water Law and Mineral Law Sections. Recent publications include: "The Prevention of Significant Deterioration in the Air Quality Program in Colorado, Colorado Lawyer (1983) and "The Implied Private Rights of Action Test as a Model for Determining Standing" (1982).

DAVID J. LENNETT (B.A. Political Science, State University of New York, Buffalo, '76; J.D. The National Law Center, George Washington University, '79) is the principal attorney with the Environmental Defense Fund, Washington, DC, on hazardous waste matters, with special emphasis on regulatory programs and policy developments in selected states. At EDF he was involved with the legislative efforts to enact Superfund in 1980, with the 1984 amendments, and with oversight of both CERCLA and RCRA. He has also traveled extensively in Australia, New Zealand and the Orient. Recent publications include: "Federal Polluters Seek Special Treatment," Environmental Forum (1985) and co-author with R.C. Fortuna, The New Era of Hazardous Waste Regulation: An Analysis and Guide to RCRA and the 1984 Amendments, to be published by McGraw Hill, spring 1986.
GENE A. LUCERO (B.A. Stanford, '70; J.D. University of California, Berkeley (Boalt Hall) '72) was appointed Director, Office of Waste Programs Enforcement at EPA in July 1982, responsible for providing national direction and support for EPA's regional offices to carry out enforcement actions under RCRA and CERCLA. Prior to that he served as Deputy Director of the Office of Emergency and Remedial Response, providing advice and assistance in managing the billion dollar Superfund program; and as Deputy Regional Administrator, EPA Region VIII, working with state and local governments and obtaining hands-on knowledge of land, air, and water quality issues. He received EPA's Outstanding Performance Award in 1981 and 1982. Before joining EPA, he was Deputy Director of the Office of Compliance at ACTION and was an Assistant Attorney General for Litigation with the Colorado Dept. of Law, 1975-78.

SHARON S. METCALF (B.A. cum laude, Bryn Mawr '69; University of Wisconsin, Madison, Law School, 1970-72; J.D. University of Denver College of Law, '75) has been since 1982 Hazardous Waste Branch Chief, Office of Regional Counsel, U.S. EPA, Region VIII, responsible for all legal and policy advice as well as enforcement and defensive litigation under RCRA, CERCLA, the Toxic Substances Control Act (TSCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the six state region. Previously she was Assistant Regional Counsel, EPA Region VIII (1981-82); and Assistant Attorney General, State of Colorado, advising and representing state agencies in matters related to state and federally-delegated water pollution control and safe drinking water programs. From 1975-77 she was an Associate Attorney with George Alan Holley & Associates. She is a member, City of Boulder Energy Advisory Board.
STEPHEN D. RAMSEY (A.B. Princeton, '69; J.D. University of Texas School of Law '72) joined Sidley & Austin's environmental practice group in 1985, dividing his time between the firm's Washington and Chicago offices. From 1972-77, he had a private practice in Austin, Texas. In 1978 he joined the Land and Natural Resources Division of the Dept. of Justice as a staff attorney, later becoming Assistant Chief of the Pollution Control Section. From 1980-85 he served as Chief of the Justice Department's Environmental Enforcement Section, responsible for litigation brought on behalf of the EPA by the Dept. of Justice. He supervised the planning, filing and conduct of complex multi-million dollar litigation, including the cases in Niagara Falls, involving the Love Canal and related sites, the dioxin cases filed in Missouri, and the $1.6 billion Rocky Mountain Arsenal case in Colorado. He received the Attorney General's Distinguished Service Award in 1983.

LAUREN STILLER RIKLEEN (B.A. magna cum laude, Brandeis University, '75; J.D. Boston College Law School, '79) became Assistant Vice President for Negotiations for Clean Sites, Inc., Arlington, Va., in 1984, with primary responsibility to serve as neutral third party in all aspects of negotiations among private parties and state and federal regulatory agencies concerning the clean-up of hazardous waste sites. From 1981-84 she was an attorney with the EPA, first with the Enforcement Division and then with the Office of Regional Counsel, where she initiated the first lawsuit filed in Region I for violation of EPA's hazardous waste management regulations. Prior to that she was Asst. Director of the Franklin N. Flaschner Judicial Institute. Her publications include "Superfund Settlements: Key to Accelerated Waste Cleanups" (1985) and "Digest of Changes Made Since May 19, 1980, in EPA Rules under Resource Conservation and Recovery Act" (1984).
LINDA L. ROCKWOOD (B.A. Economics, University of Denver; J.D. University of Texas, Austin) is an Associate at the Denver law firm Holland & Hart. Since joining Holland & Hart, her practice has focused on natural resources law, particularly environmental law. Her experience includes permitting and compliance work, particularly in the areas of hazardous waste and water quality regulation, and participation in proceedings under CERCLA (the Superfund Program of 1980). She is Vice Chairman of the Environmental Values Committee of the American Bar Association Section of Administrative Law.

JAMES R. SPAANSTRA (J.D. University of Michigan, ’77, where he served as research assistant to environmental law professor Joseph Sax) is a partner in the Denver law firm of Hultin & Spaanstra, currently engaged primarily in the private practice of environmental law and related litigation, with a particular emphasis on RCRA and CERCLA. After a legal internship in the Office of General Counsel, the Council on Environmental Quality, Washington, DC, he completed post-graduate studies at the University of Michigan's Institute for Public Policy Studies while serving as consulting attorney to the West Michigan Environmental Action Council. In 1978 he moved into private practice with Holland & Hart, Denver, to the chagrin of his environmentalist friends, and in 1981 joined the firm which became Hultin & Spaanstra. He has served as a member and co-chairman of the Colorado Committee on Hazardous Waste Regulation.
ROBERT E. WALLINE (B.S. Chemical Engineering, with honors, University of California, Davis, '70; M.S. Chemical Engineering, University of Colorado, '74) has been an environmental engineer with the EPA Region VIII Water Management Division, Permits Section, Compliance Branch, since 1976. He is Chairman of the Agency-wide Mining Waste Work Group, and also Chairman of Region VIII's Mining Waste Team. He is the principal program contact and regional expert for all technical water enforcement and effluent guideline issues pertaining to the mining, milling, smelting, and refining industries, including oil shale and coal based synthetic fuels. He manages NPDES permit development for those industries and reviews state determinations for compliance with law and regional policy.

JOHN G. WELLES (B.S. Engineering, Yale University; business degree, the Wharton School of Finance and Commerce, University of Pennsylvania) was appointed Regional Administrator of EPA's Region VIII in July 1983. The Region includes Colorado, Montana, North and South Dakota, Utah and Wyoming. From 1974-83 he was Vice President for Planning and Public Affairs at the Colorado School of Mines, and for 18 years prior to that, he was head of the Industrial Economics Division at the University of Denver Research Institute. He has worked in engineering with General Electric, in labor relations with General Motors, and has served as a consultant to the United Nations Conference on the Human Environment and to Business International. In 1979 and 1980 he chaired the Colorado Front Range Project on part-time loan to the Governor's office.
J. KEMPER WILL (B.S. Spring Hill College, '66; M.S. Biology and Education, Univ. of Wisconsin, Milwaukee, '68; J.D. Georgetown University Law Center, '73) has since 1985 been Of Counsel to Hill & Robbins, a law firm specializing in environment, natural resources, and water rights. Prior to that he was a partner with Himelspach & Will, Denver, 1981-84, and an attorney with Calkins, Kramer, Grimshaw & Harring, 1979-81. From 1975-79 he was Assistant Regional Counsel, EPA, Region VIII, serving as lead attorney for the Clean Water Act, solid & hazardous waste (RCRA), grant programs, pesticide programs, land use implications of EPA programs and environmental impact statement reviews, as well as being chief EPA attorney for matters relating to Indian law.

HAL WINSLOW, Attorney, operates Winslow & Associates, an environmental consulting and training firm in Denver. Before coming to Colorado, he worked with the Stanford Research Institute in California on a wide variety of air quality, toxic substances and regulatory reform projects. Besides working with private companies, he has advised federal, state and local governmental agencies on issues ranging from standard setting and enforcement policy to the effects of environmental regulations on small businesses. He is currently working under contract to the Colorado Association of Commerce & Industry to manage its project of information and training for small and medium-sized operations newly regulated as Small Quantity Generators (SQGs) of hazardous waste.