

**MINUTES OF THE REGULAR MEETING OF THE  
ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE BOARD**

Marriott Las Vegas Suites Hotel  
325 Convention Center Drive  
Las Vegas, Nevada

November 13, 2006

**ATTENDANTS**

Board Members:

Ron Curry, New Mexico  
Gary Baughman, Colorado  
Leo Drozdoff, Nevada

Barbara Green, Legal Counsel  
Leonard Slosky, Executive Director  
Vicki Green, Recording Secretary

Others:

Melody Massa, Department of Defense  
Alex Haalte, Nevada State Health Division  
Jerry Goad, Colorado Attorney General's Office/Colorado Department of Public Health & Environment  
Jim Spaanstra, Faegre & Benson LLP/Clean Harbors  
Jim Sanderson, Ryley Carlock & Applewhite/Colorado Utilities Coalition  
Alan Gaddy, Republic Services  
Scott Zoller, Clean Harbors Environmental Services, Inc.  
Colleen Cripps, Nevada Department of Environmental Protection  
Tom Porta, Nevada Department of Environmental Protection

**REGULAR MEETING**

Mr. Curry, Chair, called the meeting to order at 11:01 a.m. (PDT)

The first item on the agenda was the approval of the minutes of the September 13, 2006 Regular Meeting. Mr. Curry asked if there were comments or corrections to the minutes. As there were none, Mr. Baughman moved to approve the minutes of the September 13, 2006 Regular Meeting. Mr. Drozdoff seconded; the motion carried unanimously.

## **CONSIDERATION OF PROPOSED RULE 12 - DISPOSAL OF IN-REGION NORM/ TENORM WASTES**

This portion of the meeting was transcribed by a court reporter. Contact the Rocky Mountain Low-Level Radioactive Waste Board for information on how to obtain a copy of the transcript.

The following summarizes the decisions made by the Board.

Mr. Baughman made a motion to approve Rule 12 as proposed by staff with the deletion of "This rule allows the" and capitalizing "D" in disposal on the first line of 12.2 and adding to the end of the sentence on the second line of 12.2, "is not subject to regulation by the Board." Mr. Curry seconded; Mr. Drozdoff voted in opposition. The motion carried. Rule 12 as adopted is attached.

## **STATUS OF CLEAN HARBORS REGIONAL FACILITY**

Mr. Spaanstra, outside counsel for Clean Harbors, was asked to give a brief status report on the Clean Harbors facility. Mr. Spaanstra reported that when the Board met in Santa Fe, Clean Harbors had just recent filed a declaratory judgment action. A preliminary injunction hearing scheduled for September 25, 2006 was vacated when Adams County filed a motion to dismiss. That motion is based on the premise that Adams County ought to be allowed to use its various enforcement mechanisms under the hazardous waste siting act. Oral arguments were heard on that issue as well as whether there would discovery in the preliminary injunction hearing. The judge had not yet ruled based on those oral arguments. He has said that his schedule will allow for a hearing in early December. In the interim, Clean Harbors is open for business. Operationally, Clean Harbors continues to serve its long standing hazardous waste customers and is open to serve the City and County of Denver and any NORM/TENORM generators.

## **CONSIDERATION OF AMENDMENT TO RULE 6 - WASTE EXPORT, CORRECTION TO ERROR CONCERNING PERMIT FEES**

Mr. Slosky directed the Board to Tab G. He explained that there was a typographical error in the first line of the fee schedule under section 6.2. It reads "\$190 or \$0.50/cubic foot, whichever is greater." It should read "\$190 or \$0.50/cubic foot, whichever is less." In addition, a typographical error was found under section 6.7, which includes a reference to Rule 7 which needs to be changed to Rule 6. Mr. Baughman made a motion to approved Rule 12 as proposed with the noted changes. Mr. Curry seconded; the motion carried unanimously.

Mr. Slosky also gave an update on export. Since the September 13, 2006 designation of Clean Harbors for NORM/TENORM, there have been three export permits that have come before the

Board. All three were for oil and gas waste in New Mexico. The Board has approved two of those. Mr. Slosky has approved one of them. The application that Mr. Slosky approved did not meet the waste acceptance criteria at the Regional facility.

### **CONSIDERATION OF APPLICATION FROM USA ENVIRONMENTAL TO IMPORT WASTE INTO NEVADA FOR PROCESSING**

Mr. Slosky referred the Board to a handout of the import application for USA Environmental. The issue that was brought before the Board at the September 2006 meeting was that the applicant was proposing to dispose of the treated waste within the State of Nevada. The State of Nevada informed the Board that USA Environmental's application was not proper under the State's requirements. Mr. Slosky communicated that to the applicant and they have provided a revised application. He noted that the revised import application was complete, except for item 7.3J. Rule 7.3J requires the applicant to identify where the waste will be disposed of following processing. The application states that the waste will be sent to out-of-state facilities that are permitted to accept variable waste, such as Energy Solutions. Mr. Slosky stated that he did not believe that this fully met the requirements of the rule. The intent of the rule is to identify where the waste is going to be disposed of and that is reflected in the permit that is issued. So, Mr. Slosky advised the Board that the application was incomplete in this regard. One possibility was for the Board to authorize Mr. Slosky to approve this application once it is complete.

After some discussion, the Board authorized Mr. Slosky to approve the application when it is complete. Mr. Drozdoff asked that prior to issuing the permit, Mr. Slosky have the Nevada State Health Department have a final look at the application.

### **FISCAL YEAR 2005-2006 AUDIT**

Mr. Slosky had arranged for the Board's CPA firm to conference into the meeting if there are questions from the Board. He noted that the annual audit did not identify any issues.

Mr. Curry asked Mr. Slosky if the firm, Dix Barrett and Stiltner has had any conversation with other compacts during the audits. Mr. Slosky stated not to his knowledge. He stated that the firm was small and that they do a lot of government and private sector audits.

Mr. Slosky noted that there was a difference between the date of the audit and the date the audit was issued. According to accounting standards, the audit is dated the date that the fieldwork is completed. However, until all of the information is received back from the various third parties that audit cannot be distributed. This is the reason the audit was not issued until October.

Mr. Drozdoff asked which attorneys were referred to by the auditors. Mr. Slosky stated that it was the Board's legal counsel, Barbara Green, and the Board's enforcement council, Joel Cantrick. The Board had no questions for the auditors.

Mr. Curry asked if the compact had ever received a qualified audit. Mr. Slosky stated that no, there had never been any issues raised.

With nothing further, Mr. Curry moved on to the annual report.

### **ANNUAL REPORT**

Mr. Slosky explained that by statute, the annual report is sent to the governor and the presiding legislative officers of each party state on or before December 15 of each year. He explained that the highlighted areas in the draft report would show figures through November 2006 in the final report. Mr. Baughman asked if there was anything unusual in this report from previous years. Mr. Slosky stated that given the unusual activities that have occurred this year he had added a section summarizing the regional facility and the NORM/TENORM issues addressed by the Board. He asked that the Board provide staff with any comments by the end of November.

### **CONSIDERATION OF REQUEST BY STATE OF NEVADA FOR PROGRAMMATIC AUDIT**

Mr. Curry referred to Mr. Drozdoff on this matter. Mr. Drozdoff explained that executive agencies and all of the boards and commissions in the State of Nevada are subject to certain oversight by both the executive and legislative branches in the State of Nevada. He explained that the thinking behind the Governor's office request was that there was a disconnect perhaps, or difference of opinion, between the advice that the Nevada Attorney General's (AG) office has provided in certain matters of programmatic integrity or issues, compared to Board's position or Board attorney position. Nevada typically, he said, addresses issues like this through a third set of eyes. He explained that it is with that in mind that the Governor's office thought that it would make a fair amount of sense to put a third set of eyes on the issues at hand to reduce or eliminate that level of dissonance. Mr. Drozdoff stated that there were established institutional players that do this in the State of Nevada, but he did not know if such an entity exists in the realm of boards and compacts. He explained that that is essentially what the Governor's office had in mind. Mr. Drozdoff noted that this item is being flagged by the governor-elect recommending follow up.

His recommendation would be that if there is somebody familiar with boards and compacts that would sort of foot the bill as a third set of eyes, that would be a good undertaking. Mr. Drozdoff has found that in the State of Nevada audits can be helpful. He explained that sometimes there

was a level of familiarity that occurs when there is a third sets of eyes. He explained that when entities actually have to explain what the words mean, it is a good thing.

Mr. Curry asked about a timeframe. He asked if Mr. Drozdoff was waiting until the new governor comes in and sets the direction. He explained that he thinks he understands what Mr. Drozdoff is saying; however, he is a little unclear about the approach.

Mr. Drozdoff stated that he was unclear about the approach. He expressed that he was unsure if there was an entity with familiarity with compacts that would fit the bill of an independent third party.

Mr. Baughman stated that he had no problem with the concept but that implementation was a problem. In Colorado, the state auditor's office does some of these kinds of things. He explained, that with a compact of this nature, where there are three states involved, who would you find to do it? What the mechanics of going through it would be, was not completely clear to him. He stated that the challenge for him was in determining the path forward in terms of identifying a person or organization that could reasonably do this kind of thing.

Mr. Curry suggested that it would be helpful to the Board to ask someone in each state's AG office to come to the next meeting and have a discussion in front of the Board as to how each state's AG office views the compact and its authority and jurisdiction and proceed from there. Mr. Curry explained that in New Mexico the state auditor handles the financial aspects of things and the legislative finance committee oversees them. He stated that because they are the legislature that can do and deal with almost anything they want to and they do not have to subscribe to general accepted accounting procedures by any means. He felt that it seems like what the Board is talking about are legal questions rather than programmatic. The Board does not really have any programs that they are running with the staff. He stated that it is a matter of controlling the flow. He reiterated that it seemed like so much of this discussion is legal that the Board should let the attorneys have a day in front of the compact, and perhaps something would come out of that. Mr Curry commented that he just did not know.

Mr. Drozdoff stated that he was not opposed to that suggestion. He explained that he cannot offer a specific entity. He expressed that he is uncertain about the path forward. Mr. Drozdoff would support the idea of getting the AG offices together. He stated that he thinks it is a start. Mr. Drozdoff suggested that they could do some research between now and then to find out if there was somebody we can point to.

Mr. Curry suggested that a letter be sent from the Board to the AG office of each state and invite them to see if they had any interest in engaging in this discussion or do a presentation in front of the Board.

There was discussion about the Board going through a process of reviewing the rules and doing a comparison of the rules with the statute.

Mr. Curry proposed that Ms. Green draft a letter from the Board to AG office in each state that the Board can review at next meeting. It was decided that the Board would have the next meeting in early 2007 in Denver.

### **EXECUTIVE DIRECTOR'S REPORT**

Mr. Slosky directed the Board to tab K. He reported that the Board had \$243,635 cash on hand as of October 31, 2006. He reminded the Board of the next security, a Federal Agency Note maturing later this week.

### **PERMIT FEE REVENUE**

Mr. Slosky noted that the Board had received a little less than \$100,000 in permit fee revenues through October 2006. One permit fee comprises the vast majority of the permit fee revenue.

### **BUDGET VS. EXPENDITURE COMPARISON**

Mr. Slosky reported that expenditures through the end of October in the operating, legal, and travel categories were higher than the proportion of the year (33%). He noted that accounting was also greater than the budget mark, as the audit has been paid for the fiscal year.

Typically, the Board has had one meeting by this time in the fiscal year. This is the third Board meeting the Board has held in addition to two other out-of-state meetings. Mr. Slosky stated that while he was unsure of what the balance of the year would hold, he suggested that a portion of the Contingency be reprogrammed. He proposed moving \$15,000 into Operating, \$25,000 into Legal, and \$10,000 into Travel.

Mr. Baughman made motion to move \$15,000 into Operating, \$25,000 into Legal, and \$10,000 into Travel from the Contingency. Mr. Drozdoff seconded; the motion carried unanimously.

#### **STATUS OF VOLUMES AUTHORIZED FOR EXPORT AND DISPOSAL IN 2004**

Mr. Slosky referred the Board to Tab K. He noted that City and County of Denver and the U.S. Army Corps of Engineers continue to dispose of the greatest volume of waste.

#### **INVESTMENT OF FUNDS**

Mr. Slosky directed the Board to the memorandum provided by Brenda Fredrickson, the investment advisor from Wells Fargo, regarding investment options and suggestions. She recommended that the Board reinvest the \$250,000 that would mature later this week, in a federal agency note with a 2011 maturity.

Mr. Baughman made the motion to give Mr. Slosky the authority to invest \$250,000, with a 2011 maturity in the highest yielding federal agency note available when the funds are available. Mr. Drozdoff seconded; the motion carried unanimously.

With no further questions or comments, Mr. Baughman made a motion to adjourn the meeting. Mr. Drozdoff seconded; the motion carried unanimously. The Board meeting was adjourned at 12:25 p.m. (PDT).