

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

Courtyard by Marriott Denver Airport
6901 Tower Rd.
Denver, Colorado

December 18, 2007

ATTENDANTS

Board Members:

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

Barbara Green, Legal Counsel
Leonard Slosky, Executive Director
Sheri Reynolds, Recording Secretary

Others:

Craig Tessmer, Adams County
Mike Styvaert, U.S. Army Department of Defense
Scott Zoller, Clean Harbors Environmental Services, Inc.
Bill Brown, Clean Harbors Environmental Services, Inc.
Jack Kehoe, Clean Harbors Environmental Services, Inc.
Joe Vranka, Colorado Department of Public Health and Environment (CDPHE)
Dave Kerpius, Cast Transportation
Colleen Cripps, Nevada Department of Environmental Protection
Tom Porta, Nevada Department of Environmental Protection
Pete Maggiore, North Wind, Inc.
Michelle Law, University of Colorado
Brenda Fredrickson, Wells Fargo Brokerage Services
Wendy Barrett, Dix Barrett & Stiltner, PC

REGULAR MEETING

Mr. Curry, Chair, called the meeting to order at 10:00 a.m.

The first item on the agenda was the approval of the minutes of the June 8, 2007 Regular Meeting and minutes of the August 27, 2007 Telephonic Meeting. Mr. Baughman moved to approve the minutes as submitted. Mr. Drozdoff seconded; the motion carried unanimously.

STATUS OF CLEAN HARBORS REGIONAL FACILITY

Mr. Slosky summarized the amount of waste disposed of at the Deer Trail facility to date. The facility received, principally, material from the Denver Radium Project. The total amount of material received at the facility since the Board's designation is 23,313.85 tons of material resulting in compact surcharge payments totaling \$346,664.25.

Bill Brown of Clean Harbors Environmental Services, Inc. confirmed that the numbers are close to what they had projected for the year. They do not anticipate waste flows to resume until March or April of 2008 as construction will pick up again during warm weather months.

Mr. Brown requested an opportunity to discuss additional changes to the existing fee structure of the Clean Harbors facility presented in two letters addressed to the Board dated December 18, 2007. As summarized by Mr. Slosky, one of the letters suggested additional modifications to the import fee schedule outlined in Rule 7, and the second letter petitions the Board to reduce the compact surcharge. Mr. Slosky suggested that the Board move forward with the agenda items which will address modifications to Rule 7. The issue regarding the compact surcharge was not noticed in time for the meeting and, therefore, the issue can be discussed; however, no action can be taken today.

CONSIDERATION OF AMENDMENT TO RULE 6 (WASTE EXPORT)

Mr. Slosky opened the discussion by explaining that the Board has begun a programmatic review of what it does and how it does it. Modifications to Rule 6 & Rule 7 were a logical place to begin since they are the rules that are used the most.

Mr. Slosky further explained that Rule 6 is implementation of the Compact statute Article 7, Section B. Additionally, Rule 6 is the mechanism by which the Board complies with its contract with the Northwest Compact which allows the Rocky Mountain Compact to dispose of certain quantities of waste. Revisions to Rule 6 were intended to simplify the process and add clarity to how the Board is implementing this section of the Compact.

Ms. Green added that there are no substantive changes in policy to Rule 6. Rule 6 is an implementation of Article 7, Section B of the Compact. Ms. Green summarized specific changes and answered questions regarding those changes.

Mr. Curry asked how the rules compare to other compacts. Mr. Slosky explained that the Southwestern Compact approves export of low-level radioactive waste on a case-by-case basis. The Northwest Compact has statutes to regulate the import of low-level radioactive waste, but does not regulate the export of waste. The other compacts have been granting blanket annual export authorization of waste, since they do not have facilities within their compacts.

After discussion of several provisions of Rule 6 and comments by the public, Mr. Drozdoff made a motion to approve Rule 6, as proposed by staff, with an extension of time the applicant has to

accept the conditions in writing to “thirty (30) calendar days” in paragraphs 6.6 and 6.7.1 and adding language to the effect of “the Executive Director may at his discretion refer the approval to the Board rather than execute his delegated authority” in paragraph 6.7.1. Mr. Baughman seconded; the motion carried unanimously. Rule 6, as adopted, is attached.

CONSIDERATION OF AMENDMENT TO RULE 7 (WASTE IMPORT)

Mr. Slosky opened the discussion by explaining that Rule 7 was adopted before the regional facility was opened and when the only import of waste was for management, not disposal. Rule 7 has been reworked more extensively and has been divided into two parts: (1) import for disposal at the regional facility; and (2) import to other facilities. The new format is similar to Rule 6. Mr. Slosky further explained that FluidTech in Nevada is the only existing (non-disposal) management facility within the region.

Ms. Green discussed the proposed revisions in detail. She began by explaining that Rule 7 is an implementation of Article 7, Section C of the Compact and prohibits any import of waste generated outside of the region without authorization. Ms. Green explained that management is defined as the collection, consolidation, storage, treatment, incineration, or disposal of waste. She explained that Section 7.3.2 has a revamped fee structure reducing fees on waste being imported to the regional facility. Section 7.7 proposes a substantive change in volume the Executive Director is authorized to act on which is proposed to be increased to 50,000 cubic yards.

Mr. Drozdoff asked how to proceed with hearing Clean Harbors’ requests. Mr. Slosky affirmed that revisions to Rule 7 can be made today since it has been noticed. However, changes to the compact surcharge would have to be noticed before any action could be taken.

Mr. Brown of Clean Harbors Environmental Services, Inc. was invited to speak regarding the requested modifications to import fees pertaining to waste for disposal at the regional facility. He explained that large upfront fees put them at a disadvantage competitively. As proposed in a letter presented to the Board, Mr. Brown suggested a \$100 flat rate for small quantity generators (<15 tons) and a \$500 flat rate for large quantity generators (>15 tons).

Mr. Slosky agreed that it makes sense to have a low fee for a small quantity generator, which is primarily why the fee structure was changed from a per-cubic-foot fee to a per-cubic-yard fee. He further explained that the Board has determined that both import and export application fees should be at a minimum of \$200 to recover administrative fees. Understanding that not all applications will be approved and the waste may not be imported for whatever reason to generate a compact surcharge, the Board must expend resources to go through the process. Mr. Slosky suggested that the Board move to change the \$500 fee to \$200 to give the small quantity generators a break.

Mr. Slosky continued with the idea of making changes to the fee structure for a large quantity generator. The issue is similar in that the Board may extend extensive resources reviewing an application for large volumes of waste. To be realistic, an application for a very large volume would likely result in the Board convening a meeting. Again, not all waste that is approved for import will be imported and a compact surcharge received. Mr. Slosky explained that the cost to convene a meeting of the Board is much more than \$500. He further explained that the Board may need to come back at another meeting and have further discussions with interested parties to come up with a more complicated but more appropriate application fee structure.

Ms. Green opened the discussion regarding Clean Harbors' request to cap the surcharge to 125% of the Board's budget (in the second letter presented to the Board). She asked if Clean Harbors was suggesting that once the revenue reaches 125% that there would be no surcharge for future disposal. Mr. Brown was not sure how best to achieve this. Mr. Baughman expressed his concern with addressing a complicated question without taking time to research further options. He agreed, in principle, but needs more information to make a recommendation.

Mr. Tessmer with Adams County presented a letter addressed to the Board dated December 18, 2007 with their requests relating to the proposed revisions to Rule 7. Ms. Green read the letter to the Board. Adams County requested that the Board either (1) rescind its prior decision to designate Deer Trail as a regional facility, (2) disapprove of any further disposal at the regional facility until pending court actions are resolved, or (3) take no further action with regard to proposed revisions to Rule 7 until pending court actions are resolved.

Ms. Green summarized the Board's options with regard to Adams County's letter. Ms. Green explained that the Board is limited in this meeting to take action on the third request which is to take no further action on revisions to Rule 7 because the first and second option were not noticed and would need to be considered at a separate noticed meeting. However, the Board has a noticed meeting to make a decision on proposed revisions to Rule 7.

Ms. Green further added that she is not certain of the status of the legal hearings since there have been so many motions and proceedings. She would prefer to provide the Board with a more detailed update at a separate time, probably at an Executive Session. Ms. Green suggested that Adams County talk about the status of those proceedings. Mr. Tessmer suggested a later meeting as well.

Mr. Drozdoff asked Ms. Green if there is anything relevant with the legal proceedings facing Deer Trail that need to be considered or addressed. Ms. Green responded that there is nothing dispositive in any of the court's decisions that state that the Clean Harbors facility is not properly licensed so we have been operating under the assumption that it is properly licensed unless and until a court deems otherwise. Ms. Green added that Adams County has brought an enforcement action, but there is no stay that prohibits the facility from accepting material during the course of the litigation.

Mr. Baughman commented that proposed revisions to Rule 7 are needed to clarify a section of the rules and are not affected by legal proceedings concerning the facility. He sees no reason to hold up modifications to Rule 7. Mr. Drozdoff suggested that we move forward with revisions and consider revisiting this matter at a later time.

Mr. Drozdoff asked when final changes to the fee structure could be presented to the Board. Mr. Slosky responded that early spring should be fine. Mr. Slosky added that there might be more legal issues by our spring meeting and that there should be an agenda item for an update on the litigation. Additionally, we should have a representative from the Attorney General's office, the Clean Harbors facility, Adams County, and whoever else might be in the litigation at that point to present comments.

Mr. Slosky began to discuss the second part of Rule 7 which starts at section 7.12. This section is written for treatment facilities rather than disposal, so the application items are tailored to that. The fee schedule here is the same as the fee schedule that currently exists for import for management.

Mr. Drozdoff asked if FluidTech is at a disadvantage with the fee schedule. Mr. Slosky reminded the Board that the fee is the only revenue that the Board receives for non-disposal facilities because there is no compact surcharge. Traditionally, the volumes imported for management have been much smaller. To put the fees in perspective, disposal costs are \$100 to \$1,000 per cubic foot compared to a \$0.45 per cubic foot import fee. We have received no comments to indicate that our fees are considered too high. Mr. Slosky added that a processor expecting to process a large volume could come to the Board and request that the fees be reduced. There is no substantive change in this part of the rule, it has just been reworked and reformatted from the existing rule. Again, the host state must grant its approval before the Board's approval is effective.

After discussion, the revisions suggested by the staff were modified as follows: the application fee to import waste for disposal at the regional facility was reduced from \$500 to \$200 in paragraph 7.3.2; the amount of time an applicant has to accept the conditions in writing was extended to "thirty (30) calendar days" in sections 7.6, 7.8, 7.16 and 7.18; and adding language to the effect of "the Executive Director may at his discretion refer the approval to the Board rather than execute his delegated authority" was added to paragraphs 7.8 and 7.18. Mr. Curry made a motion to accept revisions to Rule 7 as discussed. Mr. Drozdoff seconded; the motion carried unanimously. Rule 7 as adopted is attached.

DISCUSSION OF FISCAL YEAR 2006-2007 AUDIT

Mr. Slosky reminded the Board that the annual audit was completed and was sent out a couple of months ago. Mr. Slosky introduced Wendy Barrett from the Board's CPA firm. Ms. Barrett, began the discussion by stating that they have been performing the audit for 3 or 4 years. She summarized the Balance Sheet and Statement of Revenues, Expenses, and Changes in Retained

Earnings. She pointed out that the income from Clean Harbors is a new item and that there was nothing unusual to report. The Board had no questions for the auditor.

CONSIDERATION OF INVESTMENT OF BOARD FUNDS

Mr. Slosky opened the discussion by explaining that the Board has approximately \$1,100,000 of funds to invest. He passed out an updated Investment Summary and explained that the funds have become available because investments have either matured recently or, due to falling interest rates, the federal agencies have called their notes back early. In the many years that the Board has been investing in these notes, this has never happened before. Because of this, the Board has much more money to invest at this time than normal.

Mr. Slosky introduced Brenda Frederickson of Wells Fargo, who has been the Board's investor for 10+ years to talk about the best options available at this point. Ms. Frederickson began by explaining that the letter at Tab M was written as a snapshot in time and that the available rates have changed slightly. She further explained that the federal prime rate has been reduced at every Fed meeting since August and are expected to drop again on January 30, 2008. Futures are expected to be at least 1/2% lower which means that we will see even lower rates than we do now. Mr. Slosky explained that the Board's available funds have been placed in a money market account. Ms. Frederickson commented that the money market account is currently at 4% but has gradually gone down since August.

Ms. Frederickson made a recommendation to the Board to find certificates of deposit (CD) offering higher yields than callable notes. She suggested that the Board consider the option of riding down the rates on callable notes if the yields are higher. Mr. Slosky presented a couple of CD options with banks other than Wells Fargo and assured the Board that only banks with a 4 (Sound) or 5 (Superior) star rating have been considered. He explained that a conservative approach is to limit the investment to \$100,000 with each bank since they are FDIC insured up to \$100,000. Based on the current tiered approach, Ms. Frederickson suggested that the Board invest \$400,000 in 2010, \$400,000 in 2011, and \$200,000 in 2012. Mr. Baughman made a motion to approve the purchase of investments based on finding the best available rates as discussed. Mr. Drozdoff seconded; the motion carried unanimously.

CONSIDERATION OF THE AGREEMENT WITH THE CENTRAL MIDWEST COMPACT

Mr. Slosky began the discussion by offering a brief history on the purpose of this agreement. He explained that the Rocky Mountain Compact took the lead on negotiating an Interregional Agreement allowing waste to flow freely between compacts. He added that this agreement allows states with processing facilities comfort because the Interregional Agreement states that if a compact sends waste out of its region for processing it cannot block the return of the waste if it cannot be disposed of. This protects those states with treatment facilities. The Central Midwest Compact is the only compact that has not entered into the general Interregional Agreement that other compacts have signed and has created its own interregional agreement which expires

periodically. Mr. Slosky explained that the Board is considering the latest extension to an existing agreement. He added that the State of Illinois has a processing facility that a few of our region's generators have used; however, the facility has not been used in recent years. Mr. Slosky explained that it would be necessary to enter into this agreement so that all facilities are made available to our generators.

Mr. Drozdoff commented that the signatory line is outdated. Mr. Slosky responded with an explanation that the Board's agenda has been full and was placed on hold until now since there have been no recent requests to export to that region. Mr. Baughman made a motion to approve the agreement. Mr. Drozdoff seconded; the motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT

Mr. Slosky directed the Board to Tab J. He reported that the Board had \$1,001,805 cash on hand as of November 30, 2007, which will be invested as discussed. With no questions, Mr. Slosky directed the Board to Tab K to discuss the budget.

BUDGET VS. EXPENDITURE COMPARISON

Mr. Slosky reported that while 41.7% of the fiscal year has elapsed, total expenditures through November were at only 27.1% of the budgeted amount. He explained that expenses are down because the Board has not held many meetings this year and that things are relatively quiet. Mr. Slosky added that the Board will need to purchase its own general liability (GL) insurance policy which was previously covered under his corporation's GL policy. The policy will cost approximately \$1,100 which will place the Insurance category over budget.

Mr. Slosky announced that the State of Texas has recently issued draft licenses to the WCS facility which is next to the New Mexico border. He added that they are in the final and most critical stage of their licensing process of that facility and that if successful there will be a new low-level waste disposal facility.

With no further issues, at 12:01 p.m. Mr. Curry moved to adjourn Regular Meeting of December 18, 2007. Mr. Baughman seconded; the motion carried unanimously.