

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

ELDORADO HOTEL & SPA
309 West San Francisco Street
Santa Fe, New Mexico 87501

April 9, 2008

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:

Frank Whitaker, U.S. Army Department of Defense
Scott Zoller, Clean Harbors Environmental Services, Inc.
John Parka, New Mexico Environmental Department
Edward Vigil, New Mexico Environmental Department
Gloria Chavez, PhD, Trinitek Services, Inc.
Stanley Fitch, Trinitek Services, Inc.
John Lehman, Lindquist & Vennum P.L.L.P. (via speakerphone)

REGULAR MEETING

Mr. Curry, Chair, called the meeting to order at 9:30 a.m.

The first item on the agenda was the approval of the minutes of the December 18, 2007 Regular Meeting and the February 2008 Board Decision to reinvest Board funds. Mr. Baughman moved to approve the minutes as submitted. Mr. Drozdoff seconded; the motion carried unanimously.

STATUS OF CLEAN HARBORS REGIONAL FACILITY

Mr. Baughman explained that the waste disposal volume received at the Deer Trail facility has declined significantly since the completion of the Denver Radium Project last year. 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.

Ms. Green provided the status of two ongoing lawsuits relating to the Clean Harbors Deer Trail (CHDT) Facility. The first is a lawsuit by Adams County against the Colorado Department of Public Health & Environment (CDPHE). The Colorado Supreme Court has agreed to hear the case and will determine whether or not Adams County has standing to challenge the CDPHE's decision to issue a radioactive license to CHDT and whether or not Adams County has standing to challenge the CDPHE's decision to modify the hazardous waste disposal permit issued for the facility. This lawsuit is still in a procedural phase. The Colorado Supreme Court will only be involved in deciding whether or not Adams County has standing to raise these two issues.

The second lawsuit is an enforcement case, Adams County versus CHDT, whereby Adams County is pursuing its position that CHDT is in violation of county regulations. The CDPHE was recently granted permission to intervene in this case. Motion for a summary judgment is due in April. The case is in its discovery period and trial is scheduled July 21-23, 2009 in Adams County District Court.

CONSIDERATION OF AMENDMENT TO CLEAN HARBORS DEER TRAIL FACILITY COMPACT SURCHARGE

Mr. Baughman opened the discussion by explaining that CHDT has requested that the Board consider an adjustment to the compact surcharge. The fee of \$15 per ton of waste disposed of at the CHDT facility is high, as compared to other disposal facilities.

Mr. Zoller of Clean Harbors Environmental Services, Inc. was invited to speak on this matter. As proposed in a letter presented to the Board, Mr. Zoller suggested a reduction in the compact surcharge fee to \$5 per ton for all out-of-compact NORM and TENORM generators, \$1 per ton for all in-compact generators, and no compact surcharge for all governmental in-compact generators. This proposal would allow the CHDT facility to become more competitive and provide NORM and TENORM generators greater incentive to utilize the facility.

Mr. Baughman asked Mr. Zoller for rationale behind classification of government versus non-government generators. Mr. Zoller explained that this would provide additional incentive for using the facility.

Mr. Drozdoff asked if Mr. Zoller could provide fee structures for other facilities other than the cited Idaho facility at \$5 per ton. Mr. Zoller agreed to provide this information as a separate document.

Ms. Green directed the Board to the compact surcharge portion of the Rocky Mountain Low-Level Radioactive Waste Compact. Article V states that “the Board shall impose a ‘compact surcharge’ per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the Board in the conduct of its authorized activities...” She suggested that because there is limited guidance regarding the compact surcharge, the Board should consider the purpose of the compact which is to ensure that in-region generators have a place for their waste and concomitant with that is the economic viability of the regional facility. The distinction between in-region governmental and non-governmental waste does not appear meaningful for the purpose of the compact or compact surcharge and might open the door to the Board having to consider a different surcharge for all governmental waste. Ms. Green added that NORM and TENORM in-region waste undergoes further distinction as to whether or not it is above or below state regulatory levels and that this may be a place for considering additional distinction.

Mr. Slosky agreed that because the Compact states that there “shall be a compact surcharge on each unit of waste” he has trouble justifying, without statutory authority, removing the compact surcharge on any category of waste disposed of at the CHDT facility; thus, there should not be a distinction between governmental and non-governmental waste. He further agreed that, otherwise, the CHDT proposed fees make sense.

Mr. Baughman stated that the Board should consider making some adjustment to the fee at this time, keeping in mind that the Board should revisit the fees at a later date when more information and history in terms of waste flows and market fees become available. He moved to change the compact surcharge to \$5 per ton for out-of-compact and \$1 per ton for in-compact generators. Mr. Drozdoff seconded; the motion carried unanimously.

Dr. Chavez of Trinitek Services, Inc. requested clarification as to whether or not the revised fee structure would apply only to NORM and TENORM waste above state regulatory levels. Mr. Slosky explained that the compact surcharge fee is applied to all waste regulated by the Board that is disposed of at the CHDT facility. Mr. Baughman added that when the State of Colorado requested designation of the CHDT facility there was concern that some of the NORM and TENORM waste generated would have low activity levels and could go to certain solid waste disposal facilities. Thus, the Board requested that the designation not cause the facility to be exclusive such that all NORM/TENORM waste would be required to be disposed at the regional facility, but that the member states would be allowed to approve the waste be disposed of at other waste facilities. Mr. Slosky clarified that none of the member three states have set numeric

below regulatory concerned levels and that at this point determination is made on a case-by-case basis.

CONSIDERATION OF AMENDMENT TO RULE 7 (WASTE IMPORT FEES)

Mr. Slosky opened the discussion by directing the Board to Tab H. He explained that the Board adopted an amendment to the fee structure in December 2007. At that time, staff was directed to further explore a fee structure that did not impose an impediment to generators applying for import of waste generated outside of the compact. The resulting staff proposed fee would be \$200 for 0-1,000 cubic yards of waste and \$100 plus \$0.10 per cubic yard for >1,000 cubic yards of waste capped at \$10,000. This new fee structure would be applied to amendments that result in an increase in volume of waste as well.

Mr. Curry asked if there is a clear definition of “storage” v. “disposal” in terms of a timeline. The Louisiana Energy Solutions, L.P. (LES) facility has suggested to the State of New Mexico that they may intend to store DUF₆ cylinders for as long as 18-20 years. LES stands to become the largest generator of low-level radioactive waste within the U.S. Mr. Slosky responded by explaining that within regulations and statute “storage” and “disposal” are defined; however, neither have focused on a time period. This might need to be defined by the Board at some point. Mr. Curry expressed concern that storage of the LES cylinders may become a high-profile controversial item of discussion in the near future and that in order to avoid a potential loop hole where storage can become open ended the Board may need to address this further. Mr. Slosky added that currently each state defines how long items can be stored before issuing a license. Ms. Green added that she and Mr. Slosky will look further into this issue.

With no further discussion, Mr. Baughman moved in favor of modifying the waste import fees as proposed. Mr. Drozdoff seconded; the motion carried unanimously. Rule 7 as adopted is attached.

EXECUTIVE DIRECTOR'S REPORT

Mr. Slosky directed the Board to Tab I and reported that the Board had \$299,287 in liquid assets as of February 29, 2008. The next two securities scheduled to mature are a Federal Home Loan Note of \$150,000 on October 24, 2008 and a Certificate of Deposit of \$100,000 on November 24, 2008. Unless more agency notes are called back early the Board will not be reinvesting more funds until later in the year. With declining interest rates, the Board recently joined a handful of credit unions in an effort to achieve the highest return while maintaining high safety on the Board's investments.

Mr. Slosky referred the Board to the Permit Fee Revenue memo, which summarizes the permit fees received from January through May of each year since 2000. He explained that the revenue from export fees and investment income have been a main source of Board income over the years. The permit fee revenues in 2007 were the lowest yielding since 2000 and may be revealing a trend. It is unlikely that permit fee revenues will reach more than \$14,000 in 2008.

BUDGET VS. EXPENDITURE COMPARISON

Mr. Slosky reported that because the Board has not had a lot of activities for the year, expenditures through the end of March are running 23.7% under budget for the proportion of the year (75%). He further explained that the only budget category that is expected to remain over the estimated amount is Insurance which resulted from the Board's purchase of a Commercial General Liability policy which was not anticipated and therefore was not in the budget. Unless something unexpected comes up, the Board should complete the year substantially under budget. Mr. Slosky added that money not spent remains in a bank account so there is no detriment to completing the year under budget.

Mr. Curry asked if the budget has taken into consideration a potential trip to tour the Urenco Netherlands Enrichment Facility. Mr. Slosky responded that it was not explicitly included in the budget and depending on when the trip occurs will determine whether or not the cost can be absorbed within the travel estimate.

Mr. Slosky directed the Board to Tab K where there are tables that track authorized volumes for export to the U.S. Ecology facility in Benton County, Washington. The total volumes are well under the authorized volumes for this facility since it appears that in-region generators are selecting other facilities for disposal.

Mr. Slosky added that he was recently approached by the LLW Forum to serve as Chair-Elect and then Chair for a one-year term. The position would require that he attend two meetings per year, be more involved in the financial operation of the organization, and possibly become part of the delegation that meets with NRC commissioners or DOE officials which might involve 1-2 trips to Washington D.C. Before making a decision to stand for election, Mr. Slosky wanted to bring this to the Board to determine if there would be any objection. There were no objections.

With no further issues, at 10:19 a.m. Mr. Curry moved to adjourn Regular Meeting of April 9, 2008. Mr. Baughman seconded; the motion carried unanimously.