

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

Peppermill Reno Hotel Casino  
2707 South Virginia Street  
Reno, Nevada 89502

June 8, 2007

**ATTENDANTS**

Board Members:

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

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

Others:

Bill Geary, Clean Harbors Environmental Services, Inc.  
Colleen Cripps, Nevada Department of Environmental Protection  
Tom Porta, Nevada Department of Environmental Protection  
Richard Breslow, VA Sierra Nevada Health Care System  
Myung Chul Jo, University of Nevada, Reno  
John Goldstein, New Mexico Environment Department

**REGULAR MEETING**

Mr. Curry, Chair, called the meeting to order at 9:31 a.m.

The first item on the agenda was the approval of the minutes of the November 11, 2007, Regular Meeting. Mr. Baughman moved to approve the minutes of the Regular Meeting dated November 11, 2007 as submitted. Mr. Drozdoff seconded; the motion carried unanimously.

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

Mr. Geary of Clean Harbors Environmental Services, Inc. provided the Board with an update on the status of the Deer Trail facility. Mr. Geary divided his comments between the status of various legal proceedings pertaining to the Deer Trail facility and the operation of the facility.

Mr. Geary stated that the facility is open for business and operating smoothly. The facility has taken receipt of licensed and permitted material as authorized by the Compact; principally, the material that it has received is from the Denver Radium Project. For the month of May the facility received 3,440.10 tons of Denver radium material. The project commenced the first week of May and continues on at present without any problems. He explained that there were a number of inspections that were conducted of the facility before the project commenced. Also, since Clean Harbors is handling the transport of the material from the construction site to the facility, a number of Clean Harbor's vehicles have been inspected without any problems. As a result, there have been no delays. The total amount of material received at the facility since we began accepting Denver radium material in December 2007 is 4,656.24 tons of material.

From a legal standpoint, Mr. Geary reported, the Adams County Court had pending a motion by Clean Harbors for a declaratory judgment, declaring the license and permit by the Colorado Department of Public Health and Environment (CDPHE) and the designation by the Compact were operative as to the facility's legal authority to accept various materials regulated by this body, as well as CDPHE. On April 25, 2007, the judge dismissed that matter based on very narrow technical grounds. In essence, Mr. Geary explained, the judge determined that the motion made by Clean Harbors was not ripe for resolution, and that the court did not have jurisdiction because the county had not taken any action to prevent the receipt of the material at the facility. On that same day, Adams County filed their own motion for declaratory judgment, which is a mirror image of the defense that they had raised in Clean Harbors' prior proceeding wherein Adams County sought to have the license and permit issued by CDPHE and designation issued by the Compact declared null and void for failure of petitioner to get an amendment to their Certificate of Designation (CD). That matter is pending.

Mr. Geary went on to say that, while those proceedings were occurring, the Denver Radium project was in readiness for commencement. Clean Harbors expected that Adams County would take either legal or police action to prevent receipt of that material. Adams County had been notified well in advance by the City and County of Denver (CCOD) that material would begin shipping to the facility in May. When that date came and the project commenced, the county did not seek any legal action by way of a temporary restraining order. That remains the case today. Nor did the county employ any police authority that it may have (i.e., sending the sheriff to our gates and physically preventing the material to be received). No action was taken.

Clean Harbors has appealed the Adams County courts dismissal of the declaratory action matter. Clean Harbors has appealed to the Colorado Court of Appeals two prior cases that had previously been brought by Adams County against the State of Colorado CDPHE in Denver and in Adams County. Both those courts dismissed the County's action. The County has in turn appealed those. Mr. Geary reported that they are all pending.

Ms. Green summarized the issue for those in the audience that were not familiar with this issue. The crux of the dispute, she explained, is that Adams County, the county in which the facility is located, is claiming that the County never authorized the facility to be there and that the State license should not have been issued because the County never approved of the facility for radioactive waste.

Mr. Geary agreed and stated that Clean Harbors disputes Adams County's position intensely.

Mr. Slosky further clarified that Adams County did issue a CD to the facility many years ago approving disposal of RCRA hazardous waste. The dispute is whether that CD covers the waste now in contention.

Ms. Geary agreed and stated that there is further language in that original CD that, as it has been transferred from owner to owner, defers authority with respect to amendments for additional waste streams including radioactive at this level to the State Department of Public Health.

Mr. Curry asked if Adams County Commission had taken any action, besides the legal, within the commission meetings themselves.

Mr. Geary stated that Clean Harbors did file a Colorado public records request to determine what actions the county commission had taken prior to initiating litigation against the State of Colorado in which Clean Harbors was an intervener, to determine what meetings were held, what discussions were conducted, what votes may have been taken, what reports may have been received, what level of interest was received by way of petitioners or by way of letters from citizens. The records that Adams County provided to Clean Harbors, under the stipulation that these were all the records that the county had, did not include record of a County Commissioner's meeting whereby the litigation was authorized or whether a vote was taken, whether the retaining of a law firm was ever taken to represent the county was ever awarded through a procurement process, or whether there was a letter of engagement. So, Mr. Geary explained, there is nothing in the record that would give us any insight as to the deliberative process, if any, or the administrative process, if any, that the county commission took before engaging this litigation.

Ms. Green stated that to her knowledge Adams County had only gone so far as to issue a Notice of Violation to Clean Harbors.

Mr. Geary stated that Adams County did send a letter in February 2007 with respect to the deliveries Clean Harbors had received from the Denver radium in December 2006 and February 2007, wherein they asserted that it was in violation of Clean Harbor's CD. Clean Harbors responded to those letters and asked for an opportunity to meet with Adams County. Clean Harbors has not received a response to those letters, nor has Adams County taken any formal official action. Mr. Geary noted that over the last several years Clean Harbors has made repeated efforts to establish direct communication with the county commission or their staff to see if there was an amiable solution to this situation and their opposition.

Ms. Green explained that, in Colorado, when there is a violation or alleged violation of a county's regulation or requirements, the county can send a letter and see if it is remedied, but the only way the county can enforce its requirements is to go to court. She noted that Adams County had not done this in this matter.

Mr. Slosky directed the Board to Tab F, where staff had prepared a table of the waste receipts of Clean Harbors that would be maintained for the Board on an ongoing basis.

#### **CONSIDERATION OF CITY AND COUNTY OF DENVER'S REQUEST FOR REFUND OF EXPORT APPLICATION FEE**

Mr. Slosky explained that last year CCOD applied for an export permit to export their annual amount of radium waste that was anticipated for disposal. The Board initially denied that application. CCOD asked the Board to reconsider and upon reconsideration the Board reaffirmed the denial of the application. Staff received an email on the 23<sup>rd</sup> of May asking the Board to refund the CCOD application fee of \$72,046.90.

Mr. Slosky explained that there is no precedence for refunding an application fee nor is there a provision in the Board rules to refunding an application fee. Given the circumstances, Mr. Slosky suggested that the situation merits a partial refund. Last fall it became clear that we had this potential inequity. When people applied for a permit and did not get it their money would be non-refundable. So, the Board divided the previous application fee into an application fee and a license fee. The application fee is to be paid up front; the license fee would be paid if the application is granted by the Board. If an export application is denied, not all the fee would be paid up front. Staff calculated the amount CCOD would have paid for the application fee if the now current rules had been in effect at the time. CCOD would have paid slightly less than

\$29,000 up front, and if the license was granted CCOD would have paid an additional \$43,273.45. Mr. Slosky suggested that the Board refund the license fee portion.

Mr. Curry asked Mr. Baughman his thoughts. Mr. Baughman stated that Mr. Slosky's suggestion was equitable and that it was not reasonable to refund the full amount. He stated that he was supportive of refunding the amount as if it was done under the current version of the rules.

Mr. Drozdoff asked whether the \$29,000 is approximately the administrative cost to the Board. After some discussion, Mr. Slosky explained the difficulty in determining the Board's administrative cost. He noted that he thought that the Board's out-of-pocket costs were significantly less. In addition, he explained that while most agencies are cash funded, the Board collects less than a fifth of the Board's operational costs through fees.

Mr. Baughman made a motion to refund \$43,273.45 of the CCOD export fee in consideration of the City and County of Denver's request. Mr. Curry seconded. Mr. Drozdoff noted that not tying costs to fees gave him pause, but the motion carried unanimously.

#### **REPORT BY JON GOLDSTEIN ON VISIT TO URENCO URANIUM ENRICHMENT FACILITY, ALMELO, NETHERLAND**

Mr. Goldstein, from the New Mexico Environment Department, presented his findings when he traveled to the Urenco facility in Almelo, Netherlands. In his presentation, he explained that Urenco controls about twenty percent of the worldwide and United States markets for enriched uranium and was created by treaty in 1970 between the United Kingdom, Germany and Netherlands (operated enrichment plants in each) and owns Louisiana Energy Services, who is building a national enrichment facility near Eunice, New Mexico. Mr. Goldstein explained the Urenco's uranium enrichment process, waste issues, and waste storage. He explained that the site was under similar state/multi-state environmental jurisdiction. The facility also operates under storage limit and has two disposal pathways.

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

Mr. Slosky explained the proposed amendment to Rule 6 to correct a technical error in the fee schedule. The fees for the 0-999 cubic feet of waste are proposed to be changed to eliminate an internal inconsistency. The proposed changes are revenue neutral to the Rules dated February 28, 2006.

Mr. Baughman made a motion to approve Rule 6 as proposed. Mr. Drozdoff seconded; the motion carried unanimously.

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

Mr. Slosky reported that the Board had a less than \$200,000 in liquid assets at the end of April. He reminded the Board that the next two securities to mature are a Certificate of Deposit of \$100,000 on July 30, 2007 and a Federal Agency Note of \$150,000 on August 3, 2007.

Mr. Slosky referred the Board to the Permit Fee Revenue memo, which summarizes the permit fees from January through May of each year since 2000. He explained that the Board had received less than \$7,000. Export fees, he noted, were not contributing much to the Board's budget.

Mr. Slosky reported that while 83% of the fiscal year has elapsed, total expenditures through April were at within the budgeted amounts. Travel is 5% higher, excluding this meeting, so he anticipates using the authority delegated to me to transfer \$5,000 to \$7,000 from Contract Services to Travel and Meetings so that this category does not exceed the budgeted amount.

Following this was the Export/Disposal reports for both 2006 and 2007. Mr. Slosky noted that there was nothing unusual.

With no further issues, at 10:49 a.m. Mr. Baughman moved to adjourn Regular Meeting of June 8, 2007. Mr. Curry seconded; the motion carried unanimously.