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*Mission: To protect and promote the health, the environment and the well-being of Clark County residents and visitors.*

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## **MINUTES**

### **CLARK COUNTY HEALTH DISTRICT DISTRICT BOARD OF HEALTH MEETING**

625 Shadow Lane  
Las Vegas, Nevada 89106  
Clemens Room

**Thursday, June 24, 2004 - 8:00 A.M.**

Chairman Reese called the meeting of the District Board of Health to order at 8 a.m. and the Pledge of Allegiance was held. He noted that he had been provided with the Affidavits of Posting and Mailing of Agenda meeting notices, as required by Nevada's Open Meeting Law. The Affidavits will be incorporated into the Official Minutes.

#### Board Members

##### Present:

Gary Reese  
Sherry Colquitt, RN  
Jim Christensen, MD  
Susan Crowley  
Andrea Anderson  
Robert Eliason  
Donna Fairchild  
Joe Hardy, MD  
Steven Kirk  
Chip Maxfield

Chairman, Councilman, Las Vegas  
Appointee, Las Vegas  
Physician At-Large  
Appointee, Henderson  
Councilwoman, Boulder City  
Councilman North Las Vegas  
Councilwoman, Mesquite  
Appointee, Boulder City  
Councilman, Henderson  
Commissioner, Clark County

##### Absent:

Rory Reid  
Stephanie Smith  
Mary Jo Mattocks, RN

Commissioner, Clark County  
Councilwoman, North Las Vegas  
Appointee, Mesquite

#### Executive Secretary:

Donald S. Kwalick, MD, MPH

#### Legal Counsel:

Stephen Minagil, Esquire

Staff: Karl Munninger; Glenn Savage; Fran Courtney, RN; Steve Goode; Ed Wojcik; Doug Joslin; Jane Shunney, RN; Rory Chetelat; Angus MacEachern; Linda Verchick; Mary Ellen Harrell; Jeanne Palmer; Jennifer Sizemore; David Tonelli; Michael Palmer; Forrest Hasselbauer; and Recording Secretaries Diana Lindquist and Montana Garcia

**ATTENDANCE:**

<u>NAME</u>	<u>REPRESENTING</u>
Mary Henson-Luera	UMC Trauma
Connie Clemmons-Brown	UMC Trauma
John Fildes	UMC Trauma
Mike Williams	The Abaris Group
Sherrie Burch	Community Counseling Center
Matt Koschmann	St. Rose Dominican Hospital
Fred Couzens	Las Vegas Tribune
Sonya R. Hill	Nevada State Health Division
Brian Bien	Nevada Construction Clean Up
L. Earl Hawley	Nevada Construction Clean Up
Kevin DeGraw	O-Reilly & Ferrario
Michael Metzler	Sunrise Hospital
Ann Lynch	Sunrise Hospital
Melinda Hursch	Sunrise Hospital
Chris Salm	SEIU
Bob Valdez	Mercy Air
Tim Crowley	Las Vegas Fire & Rescue
Gail Yedinak	UMC
Kathy Kopka	Sunrise Hospital
Robert Forbuss	Citizen's Trauma Task Force
Dan Musgrove	Clark County Manager's Office

**PRESENTATION: Plaque**

Dr. Kwalick stated that Mr. Paul Henderson was unable to attend the meeting. However, the Board and Staff recognized Mr. Henderson's service to the citizens and visitors of Clark County as a member of the Board of Health from March 1999 to April 2004.

**I. CONSENT AGENDA**

These are matters considered to be routine by the District Board of Health and may be enacted by one motion. Any item, however, may be discussed separately per Board Member request before action. Any exceptions to the Consent Agenda must be stated prior to approval.

*Member Colquitt moved for approval of the following consent agenda. Motion was seconded by Member Fairchild and carried unanimously.*

- 1. Approve Minutes/Board of Health Meeting: 05/27/04**
- 2. Approve Payroll/Overtime for Periods of: 05/04/04 - 05/21/04; 05/22/04 - 06/04/04**

3. **Approve Accounts Payable Register: #922:** 04/28/04 - 05/05/04; **#923:** 05/06/04 - 05/12/04; **#924:** 05/13/04 - 05/19/04; **#925:** 05/20/04 - 05/26/04
4. **Petition #22-04:** Approve Revision of District Administrative, Public Record and Medical Services Fee/Reimbursement Schedules for Fiscal Year 2004 - 2005 Effective 07/01/04
5. **Petition #23-04:** Approve Award of Bid for Demolition Removal of Substandard Trailers and Fixed Structures at 625 Shadow Lane
6. **Petition #24-04:** **Resolution #02-04:** Approve Proposed Adjustments to Fiscal Year 2003-2004 Appropriations
7. **Petition #25-04:** **Resolution #03-04:** Approve Adoption of Internal Revenue Service Section 125 Pre-Tax Plan
8. **Petition #26-04:** Approve the Transfer of \$500,000 from the General Operating Fund to the Capital Reserve Fund

## II. **PUBLIC HEARING/ACTION**

1. **Memorandum #03-04:** Proposed Solid Waste Management Authority Regulations Governing Materials Recovery Facilities (MRF)

Glenn Savage, Environmental Health Director remarked that because much of the discussion regarding the proposed regulations concerns legal matters, he deferred to Stephen Minagil, Board Legal Counsel for comments.

Mr. Minagil explained the basis for the request for adoption of the Materials Recovery Facilities (MRF) Regulations. In a legal action it has been discovered that there was a problem with the adoption of the regulations in 2001, therefore there is a need to re-adopt the regulations.

With the re-adoption of the regulations staff and legal counsel seek to correct another problem. In a second legal action that the Health District has undertaken to enforce solid waste statutes and regulations in Clark County, it has been alleged that one phrase in the current MRF regulations is unlawful and inconsistent with the state regulations. Mr. Minagil noted the District is bound by Nevada law requiring the MRF regulations not be inconsistent with those of the state.

Mr. Minagil pointed out that the phrase being deleted from the proposed regulations is listed in current Section 2, Definition Sub-Section 1 - where Material Recovery Facility is defined is the phrase "operated by the county any city within the county or their designate franchise or authorized agents". This language is different from what is in the State regulations and was included because in Clark County there is a unique situation where there are local codes and ordinances that govern the transportation of solid waste.

Mr. Minagil explained that when the regulations were passed the idea was to apprise the public of this unique situation in Clark County and make the regulations consistent with local codes and ordinances. Since that time the phrase has been challenged as being inconsistent with the state regulations. The state regulations basically indicate how to operate a MRF, location, design and maintenance. However, the state regulations do not indicate who can operate the

MRF and that is part of the challenge to this language because it is alleged that the District is saying who instead of how.

Mr. Minagil also explained that since the regulations have to be re-adopted, staff and legal counsel are asking to remove this language. The District has received communication indicating that removing this language may open up the flood gates and that everybody is now going to be able to operate a MRF facility, and be able to now be transporting solid waste across town, dumping it on the ground, going through it and taking some materials out and then transporting it again to wherever it's going to go. The District does not agree with that analysis.

Mr. Minagil stated Part 7 of Section 8 reads: "Operating Standards: the owner of the material recovery facility still must comply with any local ordinances regarding the storage, collection and transportation of solid waste". Mr. Minagil explained that this language allows the Health District to have the local jurisdictions provide information on whether or not facilities are qualified to do this particular activity, and if they are violating any local codes or ordinances. Any facility in violation of local codes and ordinances will not receive a permit.

The Board was asked to re-adopt the regulations with the changes proposed by staff. Mr. Minagil stated that these changes cure two challenges raised in legal actions wherein the Health District is enforcing solid waste regulations and statutes. The proposed regulations are the same as the MRF regulations adopted on December 13, 2001 with the following three revisions:

1. Section 1 is changed to read: Clark County District Board of Health Regulations Governing Materials Recovery Facilities (MRF) are hereby adopted pursuant to the authority of Nevada Revised Statutes (NRS) 444.580.
2. The language "operated by the County, any city within the County, or their designated franchisee or authorized agents" is removed from the definition of a materials recovery facility in Section 2, subparagraph 1. In its place, the following sentence is added at Section 3, subsection 2 – "Proper authorization by the local jurisdiction in which the facility is located is a condition for acceptance of an application to operate a materials recovery facility for review by the solid waste management authority."
3. Section 3, subsection 3 is removed which stated:

The owner or operator of an existing materials recovery facility that is operating prior to the adoption of these regulations, shall:

- (a) Submit an application to operate the facility in accordance with the provisions of Sections 3 and 4 of this regulation and comply with the provisions of Sections 5 and 6, subsections 2 and 3 of Section 7 and Sections 10, 11, 12 and 13 of this regulation not later than 180 days from the date of adoption of these regulations;
- (b) Comply with the provisions of Section 8 and 9 within 60 days of the date of adoption of these regulations; and
- (c) Comply with the provisions of subsection 1 of Section 7 of this regulation not later than 18 months from the date of adoption of these regulations.

Discussion followed by the Board Members and Staff concerning the language changes and the compatibility of the various jurisdictional rules and ordinances pertaining to solid waste.

Chairman Reese opened the public hearing and asked if any members of the public wished to speak.

Kevin Degraw, of O'Reilly and Ferrario, Attorney representing Lunas stated that their organization was the one who challenged the language of the MRF regulations. He added that Lunas could potentially let the Board Members pass the ordinance and then challenge it in court or try to resolve the issue up front. Mr. DeGraw stated that of particular concern first, was that the only authority local agencies or entities have is air quality and there are some things that would be applicable for zoning but not to the extent of the solid waste regulations.

Mr. DeGraw also stated that the regulations state that waste must be hauled to a landfill that has been approved by the solid waste management authority. A lot of effort has gone into figuring out who in fact has designated certain landfills as the approved landfill for certain locations and he wanted some clarification as to exactly what it meant to be approved landfill.

Mr. DeGraw also stated that the language in Section 13 -1 provides for the inspection of these facilities, however, the language is too broad and would be deemed unconstitutional pursuant to New York vs. Burger, 482 US 691. He indicated a desire to have some clarification and specifics as to the type of inspection that can be done.

Mr. DeGraw also stated that the Board is constrained by the guidelines of the legal requirement of the US constitution and his concern is making sure that this ordinance falls within those guidelines so any further legal challenges regarding this issue can be avoided.

Brief discussion followed by Board Members and Mr. DeGraw concerning possible constitutional language, local ordinances and inspection procedures.

Earl Hawley, Attorney representing Nevada Construction Clean up (NCC) remarked that he ratified what Mr. DeGraw had stated. Mr. Hawley continued that NCC had approval by staff for MRF in the past. A moratorium was placed on that approval and there has never been a recession of that moratorium. He suggested that one of the principal issues being was the legislative mandate of trying to meet a 25% recyclable goal. He indicated that they were more than happy to sit down in workshops and come up with suggested modifications to the inspection problem. Also, he urged the Board to put on the calendar an application for their organization which may have legal implications for the District but at the same time could be discussed for some resolution before a vote is taken.

Brian Bien, CEO of NCC reiterated concern over the MRF application, inspections and the language change in the regulations.

Chairman Reese asked if any other members of the public wished to speak. There being no response he closed the public hearing.

Mr. Minagil, Board Legal Counsel stated that before a Board Member made a motion, it was necessary to include a determination that the proposed regulations are not likely to impose a direct a significant economic burden upon a business or directly restrict the formation, operation or expansion of a business. No information had been received during the public hearing that indicated that the passing of the regulations as recommended by Staff and Legal Counsel has any effect of being likely to impose a direct or significant economic burden upon any business, nor would passage be likely to restrict the formation, operation or expansion of a business.

*At this time, Member Hardy moved to adopt the proposed Solid Waste Management Authority Regulations Governing Material Recovery Facilities (MRF) recommended by staff which are not likely to impose a direct or significant economic burden upon a business or directly restrict the*

formation, operation or expansion of a business. The motion was seconded by Member Crowley and carried unanimously.

### **III. REPORT/DISCUSSION – ITEMS ON WHICH ACTION MAY BE TAKEN**

#### **1. Contract Review Committee Report: Chief Health Officer and Legal Counsel**

Committee Chairman Colquitt explained that the Committee had met on June 7, 2004 and reviewed the legal counsel and the Chief Health Officer contracts.

*Per committee recommendation she moved to extend the legal counsel contract for a two year period with 5% merit increases on July 1, in each of the two years. The motion seconded by Member Eliason and carried unanimously.*

*Also, per committee recommendation she moved to extend the Chief Health Officer's contract to June 30, 2006 and in view of meritorious service to the District, include a merit increase of 5% effective June 1, 2004 and each succeeding year. The motion was seconded by Member Fairchild and carried unanimously.*

#### **2. Trauma System Development Committee Report:**

Member Hardy disclosed that he had an employment relationship with Fremont Medical Center that is partly owned by Sunrise Hospital which is a significant party in this issue. Dr. Hardy indicated that he would therefore be abstaining and not voting or taking any action on this issue.

- Citizen Task Force Update

Committee Chairman Colquitt commented that the committee met and received a report from Co-chair Robert Forbuss and members Dr. Doubrava and Dr. Ravenholt. She commended the efforts of the highly qualified Task Force members who had been dealing with this issue for over 6 months.

- Recommendation to Pursue Interlocal Agreement with the State

Committee Chairman Colquitt per committee recommendation moved to authorize Dr. Kwalick and staff to pursue an interlocal agreement with the State for appropriate delegation of authority to plan, develop and implement a comprehensive trauma system in Southern Nevada. The motion was seconded by Member Eliason and carried unanimously.

Member Kirk apologized to the Citizen's Task Force Members for any remarks that had appeared in the newspaper as he had been incorrectly informed by the reporter on the status of their progress.

Committee Chairman Colquitt invited all the Board Members to attend the next Board Trauma System Development Committee meeting scheduled for July 15, 2004 at 1:30 p.m. to formally receive the recommendations from the task force. Board of Health Members will be supplied with the materials prior to the July 22<sup>nd</sup> Board of Health meeting.

### **3. Memorandum #04-04: Community Counseling Center Update**

Dr. Kwalick remarked that Mary Ellen Harrell, Public Health Nurse Manager had met with staff of Community Counseling Center (CCC) and Dr. Lisoskie to discuss client mental health needs. It was agreed to bring together Community Counseling staff and licensed staff from Southern Nevada Adult Mental Health Service (SNAMHS) to work out a plan to meet the needs of both the clients and the agencies. CCC will be applying for funds in the next cycle. Staff will continue to follow-up on these issues.

Sherrie Burch, representing CCC brought some issues to the Board Members attention in reference to the immediacy of care for clients, financial provisions for Dr. Lisoskie and requested that CCC be placed on the July Board Agenda to discuss some of their concerns.

The Board Members directed staff to continue to review the concerns of CCC with SNAMHS. The item will be placed on the July agenda for further discussion.

Dr. Kwalick added that in reference to Dr. Lisoskie, she had indicated at the last meeting that she was not getting paid to see any of the patients. Staff was concerned about maximizing the utilization of the Ryan White I monies and that Dr. Lisoskie could continue to provide services as she had been.

## **IV. CITIZEN PARTICIPATION**

Citizen participation is a period devoted to comments by the general public about matters relevant to the Board's jurisdiction. Items raised under this portion of the Agenda cannot be acted upon by the Board of Health until the notice provisions of Nevada's Open Meeting Law has been complied with. Therefore, no vote may be taken on a matter not listed on the posted agenda and any action on such items will have to be considered at a later meeting.

Chairman Reese asked if any member of public wished to be heard. There was no response.

## **V. HEALTH OFFICER & STAFF REPORTS**

Dr. Kwalick stated that on June 25<sup>th</sup> he would be presenting to the State Board of Health the concept of an Interlocal Agreement between the State Health Division Administrator and the State Board of Health providing for the delegation of authority for the development of a trauma system in Southern Nevada. Staff and Legal Counsel will be meeting over the next several weeks to develop a consensus on the agreement.

Member Kirk asked a question concerning Westcare's Community Triage Center. Brief discussion followed between the Board Members, Staff and Dan Musgrove of Clark County about the funding problems that Westcare is having and the implications that its closure may have on the emergency rooms. The Southern Nevada Regional Planning Coalition (SNRPC) will be reviewing the issue at its July meeting. The funding mechanism for the entities to participate is the Interlocal Agreement which expires on June 30, 2004. The state, Clark County and the hospitals have made the commitment to continue funding the project. The key is the time period between July 1 and when extension of the Interlocal will be agreed upon by the local jurisdictions. Each jurisdiction's representatives on the SNRPC need to commit to continue the funding when the agreement to continue the Westcare contract comes before them. Clark County will try to work with Westcare to prevent the doors from closing on July 1<sup>st</sup>.

**VI. INFORMATIONAL ITEMS**

***Duly Noted***

**A. Chief Health Officer and Administration:**

1. Monthly Activity Report, Mid May 2004 -Mid June 2004
2. Financial Data: Revenues and Expenditures for Fund 705 (Operating), 706 (Capital Reserve), and 762 (Liability Reserve) for the Month of May 2004
3. Health Education Monthly Report, May 2004
4. Epidemiology Monthly Report, May 2004
5. Public Information Monthly Report, May 2004
6. Emergency Medical Services May 2004 Minutes
7. Letter From State of Nevada Public Health Preparedness Program Thanking Staff for Participation in the Silver Streak Table Exercise on 4/28-29/04
8. Letter From City of Mesquite Indicating Resignation of Paul Henderson and Appointment of Mary Jo Mattocks to the Board of Health

**B. Environmental Health:**

1. Monthly Activity Report, May 2004

**C. Nursing and Clinics:**

1. Monthly Activity Report, May 2004

**VII. ADJOURNMENT**

There being no further business to come before the Board, Vice-Chairman Christensen adjourned the meeting at 9:19 a.m.

SUBMITTED FOR BOARD APPROVAL

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Donald S. Kwalick, MD, MPH, Chief Health Officer  
Executive Secretary

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