

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
April 14, 2016
1:30 p.m.

Board Members Present: Dwayne Woolley (Chair), Richard Codell, Marc Franc (Conference Call Participant), Jeremy Hawk, Steve McIff, Brett Mickelson, Vern Rogers, and Shane Whitney

Board Members Absent: Dennis Riding (Vice Chair), Danielle Endres, Alan Matheson, Shawn Milne

Staff Members Present: Scott Anderson, Brent Everett, Ralph Bohn, Eric Boone, Arlene Lovato, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Otis Willoughby and Raymond Wixom

Others Present: Tim Orton, Gary Merrell, Ashley Soltysiak

I. Call to Order.

Dwayne Woolley (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m.

II. Approval of the meeting minutes for the March 10, 2016 Board meeting.

It was moved by Shane Whitney and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve the March 10, 2016 Board Meeting minutes with the following correction:

Page 4, IV Administrative Rules, Section D, Approval of a change in a proposed rule to R313-22-35 to incorporate comments made by the Nuclear Regulatory Commission, Board Motion. It was moved by Shane Whitney and seconded by ~~Shane~~ Shawn Milne and UNANIMOUSLY CARRIED to approve the filing of a change to proposed Rule to R313-22-35 to incorporate comments made by the Nuclear Regulatory Commission with an effective date of May 9, 2016.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of February 2016 was \$16,667,613.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of March 2016 is \$16,375,040.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. The balance fluctuates based on the number of claims received and the cost of claims paid. There were no questions or comments on the PST Trust Fund balance.

Board Member Dr. McIff asked for more information regarding how the PST Trust Fund works. Mr. Everett explained that the PST Trust Fund is one option available to UST owners/operators for demonstrating the EPA required financial responsibility. Although not insurance, it serves to cover the cost of cleanups for releases at facilities that participate on the fund for their financial assurance. The fund is funded by fees and a surcharge on fuel collected at the first point of sale.

Mr. Everett informed the Board that because of the federal UST rule changes finalized last summer, DERR is currently updating Utah's UST program rules to be consistent with the new federal rules.

These rule changes will come before the board first as an informational item and then for approval to proceed with formal rule making. In conjunction with the rule changes, the UST program is also going through the EPA State Program Approval (SPA) process in order to maintain delegation approval for UST program in Utah. The deadline for reauthorization is September 2018. The DERR plans to have all documents completed and submitted to the EPA by January 2017.

Mr. Everett informed the Board that House Bill 385, regarding petroleum vapor recovery at the time of fuel delivery, did not pass in the last legislative session.

IV. Administrative Rules.

A. Final adoption of proposed changes to Hazardous Waste Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273 and setting of an effective date (Board Action Item).

Ralph Bohn, Planning and Technical Support Manager, Division of Waste Management and Radiation Control, reviewed the Board's approval in the January Board meeting of the rules listed above for publication in the Utah Bulletin to start a 30-day public comment period. The proposed rules were published in the February 1, 2016 Bulletin. The comment period ended March 2, 2016.

Two commenters made comments on Rules R315-124, R315-260 and R315-261. In addition, the proposed rules were reviewed a second time by Division staff and some needed changes to Rules R315-124, R315-262, R315-264 and R315-273 were identified.

The Division of Administrative Rules classifies rule changes as substantive and nonsubstantive. Nonsubstantive changes can be made without public comment and are not published in the Bulletin. All nonsubstantive changes that were found by the Division staff review and from public comments have been made. Substantive changes that are needed to address comments and corrections resulting from staff review will be addressed in a separate Board action request.

Mr. Bohn summarized the comments received on R315-124 and R315-101. (The comments and the Division's response to the comments were provided in the Board's April 14, 2016 Board packet.)

Dwayne Woolley asked if the Division's response to comments had been discussed with and sent to the commenters. Mr. Bohn stated that they have not, as the response to comments needed to be presented to and approved by the Board first.

Mr. Bohn also noted that the entire rulemaking package will be presented to the U.S. Environmental Protection Agency for authorization. The EPA will do a word-for-word comparison and any other errors found will be brought back to the Board to address. The Division staff did not do a word-for-word check. Mr. Bohn explained that there is not a specific timeframe required for these rules to be adopted. These are optional rules, so a strict timeframe is not a concern.

As part of continued authorization of the Hazardous Waste Program, the EPA is involved in all rule changes. Once the EPA approves the rules, they are published in the Federal Register and then become Utah law.

It was moved by Steve McIff and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to Hazardous Waste Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273 with an effective date of April 15, 2016.

B. Final adoption of the repeal of Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50 and setting of an effective date (Board Action Item).

Ralph Bohn informed the Board that, upon adoption of the new rules in the previous motion, the current hazardous waste rules must be repealed. The Board is now being asked to repeal Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50. The repeal of the current rules will not take place until the new rules are in affect.

It was moved by Shane Whitney and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve for final adoption the repeal of Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50 with an effective date April 15, 2016.

C. Approval to proceed with formal rulemaking and a 30-day public comment period for amendments to the Hazardous Waste Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273 (Board Action Item).

Ralph Bohn informed the Board that, to address the public comments that have been received, the Board is being asked to approve changes to Rules R315-124, R315-260, R315-261, R315-262, R315-264, and R315-273 for publication in the Utah Bulletin and commencement of a 30-day public comment period.

In the January Board meeting, the Board approved Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273 for publication in the Utah Bulletin and to start a 30-day public comment period. The proposed rules were published in the February 1, 2016 Bulletin and the comment period ended March 2, 2016.

Two commenters made comments on rules R315-124, R315-260 and R315-261. The comments and the response to the comments are included in the Board packet. In addition, the Division identified additional corrections to Rules R315-124, R315-262, R315-264 and R315-273 that need to be made.

This Board Action is to publish modifications to Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273 to address the public comments and the sections needing corrections.

It was moved by Brett Mickelson and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and a 30-day public comment period for changes to the Hazardous Waste Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273).

D. Approval to proceed with formal rulemaking and a 30-day public comment period for proposed changes to Radiation Control Rules R313-19 and R313-22 to incorporate changes requested by the Nuclear Regulatory Commission (NRC) (Board Action Item).

Ralph Bohn explained the Director's request for Board approval of proposed changes to R313-19-13, Exemptions and selected sections of R313-22, Specific Licenses, to incorporate comments received from the Nuclear Regulatory Commission (NRC) in a letter dated November 13, 2015 (the letter was provided in the April 14, 2016 Board packet).

For compatibility with the corresponding federal radioactive materials regulations, the NRC requested the removal of selected references to the federal Atomic Energy Act and the correction of certain rule citations along with the proper location of a specific paragraph.

As an Agreement State with the NRC, Utah is required to maintain rules that are compatible with the corresponding federal radioactive materials rules promulgated by the NRC. Last September, the Division submitted to the NRC for its compatibility review, changes to the state radiation control rules that were previously approved by the Board. The approved rule changes incorporated federal regulatory revisions published in the Federal Register on July 25, 2012 (77 FR 43666). The specific rule changes requested by the NRC are found in the Compatibility Comments on Utah Final Regulations Table (the table was provided in the April 14, 2016 Board packet accompanying the NRC letter).

It was moved by Richard Codell and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and a 30-day public comment period for proposed changes to Radiation Control Rules R313-19 and R313-22 to incorporate changes requested by the Nuclear Regulatory Commission (NRC).

V. Low Level Radioactive Waste Section.

A. EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of one, 5-gallon bucket of spent Lithium-thionyl chloride batteries following macroencapsulation (Board Action Item).

Otis Willoughby, Environmental Scientist in the Low Level Radioactive Waste Section provided information on EnergySolutions' request for a variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of lithium-thionyl chloride batteries following macroencapsulation

The Mixed Waste Facility has received one, 5-gallon bucket of spent lithium-thionyl chloride batteries.

The land disposal regulations require that batteries containing lithium be deactivated prior to land disposal. Macroencapsulation technology requires the waste to be classified as debris (which is a material exceeding 60 mm) before that technology can be used.

EnergySolutions proposes to treat this 5-gallon bucket by macroencapsulation (even though the batteries are smaller than 60 mm) in the Mixed Waste Landfill Cell. This method will isolate the waste from precipitation and potential leaching. This request is based on the fact that, in order to deactivate the batteries, they would first need to be shredded. This method of treatment creates additional hazards to the employees without the assurance that the batteries, based on their size and shape, would be shredded. Final disposal of the waste will occur in the Mixed Waste Landfill Cell at the Mixed Waste Facility.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele Transcript Bulletin on March 1, 2016. The comment period began March 1, 2016 and ended March 30, 2016. No comments were received.

The Director recommends approval of this variance request based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the rules would allow macroencapsulation of this waste if it contained slightly larger pieces.

Richard Codell noted these types of batteries can still hold a lot of power/charge and if they are put into some sort of cement matrix and sealed up tight, they may still have power/charge and are discharging through the conductive presence of water and electrolytes. Mr. Codell asked if they produce gas or get hot.

Mr. Willoughby stated he does not have any experience with that scenario, but even if there is heat, there is no organic material in the landfill cell, which could cause an issue. Additional information will be requested from EnergySolutions safety personnel. Mr. Codell stated he is not especially concerned with this issue, but that because he has experience with lithium and power cells, he wanted to bring it up.

It was moved by Shane Whitney and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules to dispose of one, 5-gallon bucket of spent Lithium-thionyl chloride batteries following macroencapsulation. (Vern Rogers abstained from voting.)

B. EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of High Concentration Arsenic Waste following macroencapsulation (Board Action Item Only).

Otis Willoughby provided information on EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to dispose of High Concentration Arsenic Waste following macroencapsulation.

The Mixed Waste Facility has received approximately 105 cubic feet of Natural Gas Sweetener Filter Media. This waste, made of clay pellets, retains hazardous waste codes for arsenic, cadmium and benzene.

EnergySolutions proposes to treat this waste by macroencapsulation in the Mixed Waste Landfill Cell following chemical stabilization of the other contaminants. Macroencapsulation will isolate the waste from precipitation and potential leaching.

This request is based on the fact that the facility has attempted a variety of treatment formulas and has been unsuccessful in attaining treatment levels for the arsenic. The other contaminants have been treated below Land Disposal Restriction levels.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele Transcript Bulletin on March 1, 2016. The comment period began March 1, 2016 and ended March 30, 2016. No comments were received.

The Director recommends approval of this variance request based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method and the facility has made several unsuccessful attempts to treat the arsenic contaminants in the waste.

It was moved by Jeremy Hawk and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules to dispose of High Concentration Arsenic Waste following macroencapsulation. (Vern Rogers abstained from voting.)

VI. Director's Report.

Scott Anderson provided an update on legislation from the 2016 General Session of the Legislature that impacts the Division of Waste Management and Radiation Control.

House Joint Resolution 13, sponsored by Representative McKell, directed the Division to study solid waste disposal fees and propose a “fair and equitable” solid waste fee structure. This bill was placed on Interim Study. It is anticipated that the Division will study this matter and report the findings to one or more Interim Study Committees.

House Joint Resolution 20, sponsored by Representative Perry, gives Legislative Approval for construction and operation of a Class V solid waste landfill. Class V solid waste landfills are defined as “commercial” and require legislative approval, local government approval, a permit from the Director and the Governor’s approval.

This resolution is the first step in the process to obtain the necessary approvals. The landfill is located in Box Elder County. The owners already have a permit for Class I landfill at this location, which could be amended to a Class V permit. However, because of the extensive requirements associated with a Class V permit, it is being treated as a new application rather than amendment. The facility will also have to meet location standards, etc. Currently, the facility has not done any construction at the location. This Joint Resolution has been signed by the Governor.

House Bill 20, sponsored by Representative Perry, extends the sunset date for the Lead Acid Battery Disposal Act from 2016 to 2026. This bill has been signed by the Governor.

House Bill 138, sponsored by Representative Perry, eliminates the requirement for the Division to report on electronic waste recycling to the House Natural Resources, Agriculture and Environment and Public Utilities Interim Committees. This bill has been signed by the Governor. Mr. Anderson noted that the data will continue to be collected but will no longer be provided to these committees.

House Bill 258, sponsored by Representative Oda, created some exemptions from the definition of “solid waste” and “solid waste management facilities” for metal and metal recycling facilities and creates standards for recyclers under certain conditions.

However, because these exemptions do not exist in Federal law, the Environmental Protection Agency has reviewed these exemptions and has made the determination that they conflict with Federal law. The EPA has determined that these exemptions make the State of Utah hazardous waste program less stringent than the federal government and raise state authorization (primacy) issues. The Division’s waste management programs can be more stringent than the Federal Government; but they cannot be less stringent.

This bill was vetoed. The Governor is willing to consider another bill, which does not conflict with Federal law, for the special session scheduled for May. The Division is currently working with EPA and the sponsors of this bill.

House Bill 347, sponsored by Representative Handy, creates authority for special service districts to acquire, construct and operate a resource recovery project. This bill is similar to Senate Bill 142, sponsored by Senator Weiler. During a committee meeting it was decided to move the relevant language in SB 142 to HB 347, because HB 347 opened the same part of the Code and was ahead of SB 142. This bill is to assist a particular Sewer Improvement District (SID) to take food wastes and put them through a process to generate gas for use in production of electricity. The SID will be required to

obtain a Plan of Operation that identifies waste types and how they are managed on-site before they are treated in this process. This bill has been signed by the Governor.

House Bill 476, sponsored by Representative Ipson, created a waste paint management program. This bill provides for fees on the sale of paint at the distributor and retail level. The money collected would be utilized to fund a program for recycling and re-use of waste paint rather than disposal in a landfill. This bill did not pass, but was placed on the Interim Study list.

Senate Bill 196, sponsored by Senator Iwamoto, created incentives for recycling plastic bags, and imposes a 10 cent fee on certain plastic bags at point of sale. This bill did not pass.

Senate Bill 231, sponsored by Senator Adams. This bill is in response to legislation Senator Adams sponsored last year to address options for establishing financial assurance hazardous waste and low level land disposal facilities.

The Nuclear Regulatory Commission (NRC) declared that legislation not compatible with the federal program so SB 231 was drafted to address those issues raised by the NRC. SB 231 provides approval authority for the Director regarding financial assurance from low level waste management facilities and authority to require financial assurance for “disturbed lands.” The NRC still had some issues and this bill, due to time constraints, was pulled at the sponsor’s request. The Division will continue to work with the NRC and will prepare language for the 2017 Legislation.

Vern Rogers stated that Senate Bill 231 was pulled but it was drafted to revise legislation that was passed in 2015. There are licensees that are currently operating under some of that language of the 2015 statute. Mr. Rogers asked if the Division plans on developing rules consistent with that statute or is it going to wait until the law is amended again.

Mr. Anderson stated that discussions are currently taking place on this matter and the intent is to move forward with the rules.

VII. Other Business.

A. Misc. Information Items.

Dwayne Woolley announced he will be retiring; the May meeting will be his last meeting. It is anticipated that an election of a new Chairman will be held at the next month meeting.

B. Scheduling of next Board Meeting.

The next Board meeting is scheduled for 1:30 p.m. on May 12, 2016 at the Utah Department of Environmental Quality, 195 North 1950 West, SLC.

VIII. Adjourn.

The meeting adjourned at 2:21 p.m.