

Waste Management and Radiation Control Board Meeting  
Utah Department of Environmental Quality  
195 North 1950 West (Conference Room #1015) SLC, Utah  
June 9, 2016  
1:30 p.m.

**Board Members Present:** Brett Mickelson (Chair), Richard Codell, Danielle Endres, Mark Franc, Jeremy Hawk, Alan Matheson, Steve McIff, Shawn Milne, Vern Rogers and Shane Whitney

**Board Members Absent:** Dennis Riding (Vice Chair)

**Staff Members Present:** Scott Anderson, Brent Everett, Craig Anderson, Gary Astin, Scott Baird, Therron Blatter, Ralph Bohn, Ed Costomiris, David Esser, Rusty Lundberg, Jennifer Nelson, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Don Verbica, Otis Willoughby and Raymond Wixom

**Others Present:** Gary Mossor, Tim Orton, Joe Ozimek, Steve Sheffey, Dan Shrum and Ashley Soltysiak

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Dennis Riding (Vice Chair) was excused from the meeting.

II. Approval of the Meeting Minutes for the May 12, 2016 Board Meeting (**Board Action Item**).

**It was moved by Shawn Milne and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve the May 12, 2016 Board Meeting minutes.**

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 April 2016 was \$16,422,739.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of May 2016 is \$17,142,184.00. The cash balance of the PST Trust Fund is watched closely, particularly since the passage of House Bill (HB) 120 which increased coverage under the PST Trust Fund from \$990,000.00 to \$1,990,000.00 and HB 138 which increased the fuel surcharge and instituted a rebate program. There were no questions or comments on the PST Trust Fund balance.

IV. UST Program Overview and Summary of Proposed Changes to R-311, Underground Storage Tank Rules (Informational Item Only).

Therron Blatter, Underground Storage Tank (UST) Branch Manager, gave an overview of the UST Branch, which is comprised of three sections. The UST Section ensures compliance with state and federal rules by performing compliance inspections and overseeing installation, upgrades and closure of USTs. The PST Fund Section regulates cleanup of PST Trust Fund covered sites. The Leaking Underground Storage Tank (LUST) Remedial Assistance Section regulates cleanup of responsible party funded sites and conducts LUST Trust investigations and cleanup.

Gary Astin, Rules Coordinator for the Underground Storage Tank Program, gave a presentation explaining the parts of an underground storage tank system. He also reminded Board members that an overview and link to the proposed changes to R311 were provided in the Board packet. The new rules will incorporate by reference the new Federal UST regulations, modify the UST rules to administer the Federal regulations, and remove redundant or out-of-date wording and make other necessary changes. Mr. Astin explained that Federal regulations for USTs began in 1988. The new Federal regulations ensure proper operation and maintenance of UST equipment. These regulations became effective October 2015; however, most of the requirements of the new regulations become effect October 2018. The DERR would like to incorporate, by reference, the new Federal regulations except for the operator training requirements which Utah already has in place due to changes made pursuant to the Energy Act of 2005. The new rules will modify the monthly operator inspections to reflect the federal requirements. Changes have also been made to no longer require by reference the monthly operator inspection form to be used. This will allow individuals to track inspections in the way that works best for them. This is an informational item only. The DERR will ask the Board for approval to go to through a formal public comment period at a future Board meeting. The DERR is working to have the new rules become effective in December of 2016. There were no questions or comments.

V. Administrative Rules.

- A. Approve for filing with the Division of Administrative Rules, a Five-Year Review Notice and Statement of Continuation for the following Radiation Control Rules: R313-12 General Provisions; R313-14 Violations and Escalated Enforcement, R313-16 General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines; R313-17 Administrative Procedures; R313-18 Notices, Instructions, Reports to Workers by Licensees or Registrants; R313-19 Requirements of General Applicability to Licensing of Radioactive Materials; R313-22 Specific Licenses; R313-25 License Requirements for Land Disposal of Radioactive Waste; R313-28 Use of X-Rays in the Healing Arts; R313-32 Medical Use of Radioactive Material; R313-36 Special Requirements for Industrial Radiographic Operations; and R313-70 Payments, Categories and Types of Fees (**Board Action Item**).

Rusty Lundberg, Deputy Director, Division of Waste Management and Radiation Control reviewed the filing of five-year reviews for the twelve separate Radiation Control Rules listed above. Mr. Lundberg informed the Board that, for the rule to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review. These rules were last reviewed in 2011.

The Utah Administrative Rulemaking Act (Utah Code Annotated (UCA) §63G-3-305) requires state agencies to review each of their administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to provide agencies with an opportunity to evaluate the rules to assess if the rules should be continued. In performing a five-year review, an agency may consider the need to amend or repeal rules that are archaic in form, are no longer used, are not based on existing statutory authority or are otherwise unnecessary.

As part of the process, a "Five-Year Notice of Review and Statement of Continuation" form (a copy of this form was provided in the June 9, 2016 Board packet) must be submitted to the Division of Administrative Rules. This form includes the following information: a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize the rule; a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and, a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.

The Radiation Control Act authorizes the Waste Management and Radiation Control Board to make rules governing Utah's Radiation Control Program (UCA §19-3-104). Because the Administrative Rulemaking Act's definition of "agency" includes each state board authorized or required by law to make rules, it is appropriate that the Board approve a five-year review of a rule.

Mark Franc asked how often rules are eliminated based on the five-year review. Mr. Lundberg was not aware of any rule that has been eliminated because of a five-year review. Normally, most rules changes occur in between a five-year review period, and those changes usually include repealing/replacing a portion a rule, and other various changes needed that often relate to a "Federal" rule change/requirement, to continue delegation of the programs, etc.

Mr. Franc asked what kind of comment would have to be listed in the comment summary, i.e., does it need to be a formal written comment.

Mr. Lundberg explained that the statute requires agencies to identify any comments received either opposing or supporting the rule. Most stakeholders comment on the proposed changes rather than requesting the elimination of a rule. Therefore, in general, the more important comments were included and summarized on the Five-Year Notice of Review and Statement of Continuation forms included in the Board packet.

Brett Mickelson asked how many comments have been received since the last five-year review/renewal process in 2011. Mr. Lundberg stated that five or six of the rules have comments that were extensive. Those comments have been included on the Five-Year Notice of Review and Statement of Continuation forms submitted to the Division of Administrative Rules.

**It was moved by Shane Whitney and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve filing a Five-Year Review Notice and Statement of Continuation for Radiation Control Rules R313-12, R313-14, R313-16, R313-17, R313-18, R313-19, R313-22, R313-25, R313-28, R313-32, R313-36, and R313-70.**

B. Final adoption of Amendments to the Hazardous Waste Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273 (**Board Action Item**).

Ralph Bohn, Planning and Technical Support Manager, Division of Waste Management and Radiation Control, reviewed the request for the Board to approve for final adoption the Amendments to the Hazardous Waste Rules listed above and set the effective date as June 10, 2016.

During the April 14, 2016 Board meeting, the Board approved the Amendments to the Hazardous Waste Rules listed above for publication in the May 1, 2016 Utah Bulletin and 30-day public comment period. The 30-day public comment period ended on May 31, 2016. No comments were received.

**It was moved by Mark Franc and seconded by Shawn Milne and UNANIMOUSLY CARRIED to approve for final adoption Amendments to the Hazardous Waste Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273 and set the effective date as June 10, 2016.**

- C. Approval to proceed with formal rulemaking and a 30-day public comment period for amendments to Hazardous Waste Rule R315-261 and to set an effective date of August 15, 2016 **(Board Action Item)**.

Ralph Bohn reviewed the request for the Board to proceed with formal rulemaking and a 30-day public comment period for amendments to Hazardous Waste Rule R315-26 and to set an effective date of August 15, 2016, subject to receiving no comments on the proposed changes.

One of the actions was to remove a section of the rule that was not needed. In removing the section, a portion was inadvertently left in. Part of this proposal is to remove the orphan section. The other proposal is to change the word “variance” to “exclusion” or “alternative financial liability requirement.” EPA uses the term “variance” in several ways. In several sections, the term “variance” is used to mean that an alternative set of requirements may be used in regulating a waste activity when specific conditions are met. The Utah Solid and Hazardous Act uses “variance” in a very specific and defined way to mean an approval granted by the Board that removes a waste management activity from being subject to the applicable rules. Variances granted by the Board are for one year and are subject to public comment. Variance as used by the EPA is intended to be an alternative set of conditions that are imposed on a waste management facility and are intended to be part of a permit or operation approval granted by the Director.

**It was moved by Shawn Milne and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to proceed with formal rulemaking and a 30-day public comment period for amendments to the Hazardous Waste Rule R315-261 and to set an effective date of August 15, 2016, subject to receiving no comments on the proposed changes.**

- D. Final adoption of proposed changes to the Radiation Control Rules R313-19 and R313-22 to incorporate changes made by the Nuclear Regulatory Commission (NRC) **(Board Action Item)**.

Rusty Lundberg reviewed the proposed changes to the Radiation Control Rules R313-19 and R313-22. During the April 14, 2016 Board meeting, the Board approved for public comment, the filing and publication of rule changes requested by the Nuclear Regulatory Commission (NRC) in a letter dated November 13, 2015. 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.

The proposed changes were published in the May 1, 2016 edition of the Utah State Bulletin, initiating a 30-day public comment period. The comment period ended on June 1, 2016. No comments were received. The Board is being requested to adopt the rule changes to R313-19-13, Exemptions and selected sections of R313-22, Specific Licenses, as published in the May 1, 2016 edition of the Utah State Bulletin and set an effective date of June 10, 2016.

**It was moved by Richard Codell and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to the Radiation Control Rules R313-19 and R313-22 to incorporate changes made by the Nuclear Regulatory Commission (NRC), and set the effective date as June 10, 2016.**

VI. 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 treat waste containing High Subcategory Mercury by stabilization rather than retort and recovery (**Board Action Item**).

Otis Willoughby, Environmental Scientist in the Low Level Radioactive Waste Section provided information on EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to treat by stabilization, waste containing High Subcategory Mercury.

EnergySolutions requests approval to receive and dispose in the Mixed Waste Landfill Cell, waste carrying the D009 or U151 High Mercury-Organic Subcategory and High Mercury-Inorganic Subcategory hazardous waste codes that have been treated using stabilization/amalgamation technologies. Furthermore, EnergySolutions will perform the stabilization/amalgamation treatment on D009 and U151 High Mercury Subcategory waste streams that have not been treated prior to arrival at the EnergySolutions Clive facility. All actions will be performed in accordance with EnergySolutions State-issued Part B Permit.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on May 3, 2016. The comment period began May 3, 2016 and ended on June 3, 2016. No comments were received.

The Director recommends approval of this variance 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 required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste. Also, EnergySolutions has successfully treated similar waste streams in the past using this approach.

EnergySolutions anticipates approximately 500 cubic feet of additional High Mercury Subcategory waste for disposal in the next year under this treatment variance.

**It was moved by Shawn Milne and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approve EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules to treat waste containing High Subcategory Mercury by stabilization rather than retort and recovery. (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 not be required to meet Land Disposal Restriction treatment standard for PCBs (**Board Action Item**).

Otis Willoughby provided information on the EnergySolutions request for a site-specific treatment variance from the Land Disposal Restriction treatment standard for PCBs.

This variance is being requested for approximately five tons of waste generated at the Clive Mixed Waste Facility (site-generated waste) that may be circumstantially contaminated with PCBs from operations at the site. The Mixed Waste Cell is a hazardous waste landfill permitted by the State of Utah. Consequently, if the PCB waste did not carry RCRA hazardous waste codes, but contained the same PCB concentrations, it could be disposed in this cell without additional treatment.

Mr. Willoughby clarified that the variance is being requested for approximately five tons of waste generated at the Clive Mixed Waste Facility. The information provided to the Board in the May 12, 2016 Executive Summary incorrectly stated 50 tons of waste generated.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on May 3, 2016. The comment period began May 3, 2016 and ended on June 3, 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 for direct disposal of this waste if it only contained the PCB contaminants.

**It was moved by Shawn Milne and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules to not be required to meet Land Disposal Restriction treatment standard for PCBs. (Vern Rogers abstained from voting.)**

VII. Other Business.

A. Misc. Information Items – None to report.

B. Scheduling of next Board meeting and discussion of possible Board tours/dates.

The next Board meeting is scheduled for 1:30 p.m. on July 14, 2016 at the Utah Department of Environmental Quality, 195 North 1950 West, SLC.

Mr. Anderson stated that once dates and locations are finalized for upcoming Board tours, the information will be presented to the Board members for their consideration.

VIII. Adjourn.

The meeting adjourned at 2:25 p.m.