



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

A regular meeting of the Waste Management and Radiation Control Board has been scheduled for October 13, 2016 at 1:30 p.m. at the Utah Department of Environmental Quality, Multi-Agency State Office Building, Conference Room #1015, 195 North 1950 West, SLC.

(One or more members may participate telephonically.)

AGENDA

- I. Call to Order.
- II. Introduction of Nathan Rich – New Board Member
- III. **Approval of the Meeting Minutes for the September 8, 2016 Board Meeting (Board Action Item)**..... Tab 1
- IV. **Underground Storage Tanks Update**..... Tab 2
- V. Administrative Rules Tab 3
 - A. **Final adoption of repeal of Rule R313-27, “Medical Use Advisory Committee” (Board Action Item)**.
- VI. Used Oil Program Tab 4
 - A. **Approval to proceed with formal rulemaking and 30-day public comment period for Used Oil Rules, R315-15-13 (Board Action Item)**.
- VII. X-Ray Program Tab 5
 - A. **Request for Exclusion from certain requirements of R313-28-31(5) (Board Action Item)**.
- VIII. Other Business.
 - A. Misc. Information Items.
 - B. Scheduling of next Board meeting.
- IX. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Dana Powers, Office of Human Resources at (801) 499-2117 TDD (801) 903-3978 or by email at dpowers@utah.gov.

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
September 8, 2016
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice Chair), Danielle Endres, Mark Franc, Jeremy Hawk, Steve McIff, Shawn Milne, Vern Rogers and Shane Whitney

Board Members Absent: Richard Codell and Alan Matheson

Staff Members Present: Brent Everett, Rusty Lundberg, Craig Anderson, Therron Blatter, Gary Astin, Ralph Bohn, Doug Hansen, Arlene Lovato, Rusty Lundberg, Lisa Mechem, Deborah Ng, Rick Page, Elisa Smith, Don Verbica and Otis Willoughby

Others Present: Linda Ebert, Kal Fishman, Karen Langley, Michael Sardeno 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. Alan Matheson and Richard Codell were excused from the meeting.

II. Approval of the Meeting Minutes for the August 15, 2016 Board Meeting.

It was moved by Shawn Milne and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the August 15, 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 July 2016 was \$17,213,545.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of August 2016 is \$17,974,397.00.

The draft actuarial report has been received by the DERR and is currently being reviewed by DERR staff. The projections show the cash balance of the PST Trust Fund should continue to increase for the next five years. Changes to the PST Trust Fund were made due to legislation a couple of years ago and the cash balance of the PST Trust Fund is watched closely. There were no questions or comments on the PST Trust Fund balance or the draft actuarial report.

IV. Underground Storage Tank Rules.

A. Approval to proceed with formal rulemaking and 30-day public comment period for changes to the Underground Storage Tank Rules R311-200, R311-201, R311-202, R311-203, R311-206, and R311-212 (Board Action Item).

Gary Astin, Rules Coordinator for the Underground Storage Tank (UST) Program, requested approval to proceed with formal rulemaking and a 30-day public comment period for changes to the Underground Storage Tank Rules R311-200, R311-201, R311-202, R311-203, R311-206, and R311-212. The DERR

has conducted outreach regarding rule changes and has asked for informal stakeholder comments. The DERR has also submitted a copy of the rule changes to the U.S. Environmental Protection Agency (EPA) for review as part of state program approval process.

In June, an overview of the rule changes was presented to the Board. During this same time period, the draft rules were sent out to all stakeholders for informal comment. Based on comments received, there have been a few changes made to the rules that were presented to the Board in June. The new EPA regulations require spill bucket and containment sump testing. The UST Advisory Task Force suggested that tank owners be allowed to do some testing themselves rather than requiring all tests to be performed by certified testers. The changes will allow these particular tests to be completed by a certified tester, a certified installer, or in some cases the tank owner. A rule regarding secondary containment has also been changed to specify the dates that state rules are effective and when federal rules will be effective so that there is not a gap in enforcement. The proposed rules had been changed to change a laboratory method for oil and grease analysis in water samples; however, after further consideration the DERR determined that this change is not needed and it has been removed from the proposed rule changes.

The DERR would like to perform the required 30-day public comment period during the month of October.

Danielle Enders asked why the DERR is changing the rules so that tank owners can test. Mr. Astin stated that the UST Advisory Task Force requested owners be allowed to do this testing because it is a simple test and will reduce costs for the facility owner. Vern Rogers asked if a State of Utah inspector will verify the test. Mr. Astin reported that an inspector will not be on site when the test is performed, but an inspector will review the results of the test. Dennis Riding asked if comments had been received from stakeholders. Mr. Astin stated that most of the comments were actually questions and clarification has been provided. Mr. Riding expressed his appreciation to the UST Program for holding stakeholder meetings and working to find consensus on issues that were raised.

It was moved by Dennis Riding and seconded by Shawn Milne and UNANIMOUSLY CARRIED to Approve proceeding with formal rulemaking and a 30-day public comment period for changes to the Underground Storage Tank Rules R311-200, R311-201, R311-202, R311-203, R311-206, and R311-212.

V. X-Ray Program.

- A. Exemption request for the Sensus SRT-100 machine from the requirements of R313-30-3(3), R313-30-3(4), R313-30-3(5) and R313-30-3(6) (Board Action Item).

Dr. Lisa Mechem, Environmental Scientist, X-Ray Program, reviewed the request from Sensus Health Care for an exemption for dermatologists and other licensed medical practitioners/users from Utah Administrative Code R313-30-3(3), R313-30-3(4), R313-30-3(5), and R313-30-3(6) so these individuals could own and operate the Sensus SRT-100 machine in their offices as an alternative to the surgical removal of skin lesions.

The SRT-100 machine is a superficial radiation therapy machine for treatment of non-melanoma skin cancers and keloids. It is a low radiation output unit used to treat two dimensional skin lesions. The therapy rules, from which the exemption is being requested, are for the high radiation output machines used to treat three dimensional tumors within the body. The training requirements, physics of positioning and dosing are quite different for the two types of treatment.

In accordance with Utah Administrative Code R313-12-55(1) , the Board may, upon application or upon its own initiative, grant exemptions from the requirements of Utah Administrative Code R313-12 through 70 as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

Dr. Lisa Mechem provided a PowerPoint presentation. (A copy of the presentation is provided with the meeting minutes.)

The Director recommends the Board grant an exemption from the requirements of Utah Administrative Code R313-30-3(3), R313-30-3(4), R313-30-3(5), and R313-30-3(6) under the following Conditions of Exemption:

1. Sensus shall conduct training of dermatologists to allow them to be the Authorized User of the SRT-100 machine;
2. Training shall be conducted using the training materials and duration described in the Sensus July 28, 2016 exemption request to the Director (DRC-2016-008950);
3. Sensus shall document the training by forwarding a Certificate of Training to the Director for each person trained;
4. Sensus shall notify the Director whenever a SRT-100 machine is sold in Utah (F2579); and,
5. The exemption shall expire upon Board adoption of rules for superficial radiation therapy.

Karen Langley, Radiation Safety Officer/Medical Health Physicist, expressed concerns, not with the efficacy of the device, but with the fact that this constitutes radiation therapy and she feels that an opportunity should be granted for her and her professional colleagues to review the request as this is a large change in the delivery of radiation therapy. Ms. Langley received notice two days in advance of the Board meeting of the proposed exemption request and asked for a public comment period for at least 30 days so adequate time could be provided to review the request. Ms. Langley stated there may be portions of the exemption that perhaps should not be accepted, so a thorough examination is warranted.

Ms. Langley also informed the Board that this is a concern on a national level. The Conference of Radiation Control Program Directors Task Force was formed to address concerns, from a national perspective, relative to the execution of radiation therapy utilizing this type of technology. Ms. Langley also expressed concern that it is unclear how the exemption relates to the radiation therapy section of the rules.

Ralph Bohn informed the Board that this machine has been approved for use in 40 other states.

Kal Fishman, Chief Technology Officer, Sensus Healthcare and Michael Sardano, General Counsel, Sensus Healthcare, provided comments.

Mr. Fishman provided background information on the use of the SRT-100 equipment. The primary focus is for the patient's safety and welfare while utilizing the machine. It was noted that more than 270 machines have been installed in 40 other U.S. States and other countries all over the world, successfully treating 250,000 patients with approximately 98% cure rates with no safety or adverse events identified. At this point, surgery has been the more common option used by physicians. All machines are regulated by the FDA. The system also does a daily check to ensure safety of the patient is maintained. This is a front-line tool that could be utilized to properly and successfully treat certain skin conditions.

Jeremy Hawk requested clarification regarding the requirements under Utah Administrative Code R313-30-3(4), training for radiation therapy physicists.

Dr. Mechem clarified that the qualifications for the radiation therapy physicist for standard therapy is what Sensus Healthcare is requesting to be exempted from; not from the medical physicist or qualified expert that performs the annual surveys of the therapy machines. A qualified expert would be required to check the equipment annually, not a radiation therapy physicist being present daily, etc.

Mr. Hawk also asked who operates the machine and about its radiation output. Mr. Fishman stated the authorized operator would be the licensed physician, with the requirements outlined in the “Conditions of Exemption” stated above. Sensus also conducts an annual users meeting to provide training for the licensed physicians as well as other meetings sponsored by national professional associations that serve as opportunities for the medical community to address this therapeutic modality.

A brief discussion regarding the timeframes and the therapeutic dose of delivery of radiation output the equipment produces, etc. was held.

At the request of the Board Chair to provide additional clarification regarding the procedural approach to exemption requests, Rusty Lundberg, Deputy Director, stated that there is nothing in the current rules mandating a public comment period as the Board considers exemption requests. However, the Board has the authority to hold this matter until the next Board meeting and direct the Division to conduct a public comment period and seek input from stakeholders and bring any information back to the Board for its consideration at a future meeting. Mr. Hawk stated he would be interested in obtaining public comments (allowing other professionals in the field to weigh in on this matter) and felt he needed additional time to thoroughly review the safety issues/aspects before he could vote on this matter.

The Board was informed that this request could be put on hold, except for one physician who is currently treating some of his patients with the SRT-100 machine. Any new use of the SRT-100 machine would be put on hold pending Board approval of an exemption.

Shane Whitney asked if Sensus Healthcare had to go through the exemption process in the other states. Mr. Fishman stated not all states needed to issue an exemption, as most states have rules in place that address this type of treatment. It was noted that Colorado recently granted an exemption to its rules, that are equivalent to Utah’s, for the use of the Sensus unit.

Marc Franc asked for additional information that addresses why the company can’t comply with the regulations as written, i.e., why Sensus is requesting this exemption.

Mr. Fishman stated the current regulations prevent dermatologists from utilizing the SRT-100 machine because they do not have the qualified staff to perform the treatment nor can they afford to hire the qualified staff to operate the machine, similar to the staffing of qualified personnel that exists in a hospital, in order to comply with the existing rules.

In response to a question from Brett Mickelson regarding the possible discretion available to the Board with respect to this matter, Craig Anderson, Attorney General’s Office, reaffirmed the Board has the authority to grant an exemption to the rules. He further explained that there is not a requirement for the Board to conduct a public comment period, but the Board does have the discretion to allow a 30-day public comment period. Granting a conditional exemption during the pendency of a 30-day public comment period, is something the Board has the discretion to consider.

Steve McIff expressed the need to consider the best interests and medical needs of a patient undergoing treatment and the medical ethics associated with preventing or stopping such treatment from continuing.

Shawn Milne stated his interest in possibly offering a motion granting a conditional exemption in order to allow for a public comment period and stakeholder feedback as well as giving due consideration to any patients now undergoing treatment.

Jeremy Hawk informed the Board that there are other facilities/machines available that can perform similar treatments for patients superficially; this is not a new treatment or an unavailable treatment for patients. This is just a different type of machine to deliver the treatment. Therefore, even if the exemption is not granted, the treatment could continue, just not at the same facility.

Ms. Langley questioned how a patient could be treated if the exemption has not been granted yet. Dr. Mechem explained that a machine was registered in the State of Utah and was already in use in a dermatologist's office. That office was then contacted and informed that an exemption request was required before the machine could be further utilized, as it is currently operating outside the rules.

Further discussion took place granting a motion for a public comment period not to exceed 30 days and allowing any patient currently receiving treatment to continue receiving treatment (not to exceed 90 days) as long as there was not a negative impact on public health and safety or the environment.

It was moved by Shawn Milne and seconded by Marc Franc that the Board grant an exemption for the Sensus SRT-100 machine from the requirements of Utah Administrative Code R313-30-3(3), R313-30-3(4), R313-30-3(5) and R313-30-3(6) not to exceed 90 days, but could be extended if the Board so desires, and within that 90 day timeframe a 30-day public comment period be conducted to receive public input with the information received during the comment period being brought back to the Board. Brett Mickelson, Dennis Riding, Danielle Endres, Steve McIff, Vern Rogers and Shane Whitney voted in favor of the motion. Jeremy Hawk voted against the motion.

The motion was clarified that other patients could begin this type of treatment during the 90-day exemption.

Vern Rogers asked to seek input from CRCPD on this matter. Mr. Lundberg stated that will be done and any information available from CRCPD will be brought back to the Board for its consideration.

VI. Report to Legislature

- A. Review of comments and Final Approval of the Evaluation of Closure, Post-Closure and Perpetual Care for Hazardous and Radioactive Waste Treatment and Disposal Facilities, Report to Legislature (Board Action Item).

Don Verbica, Low Level Radioactive Waste Manager, reviewed the changes made to the final Report prepared for the Board for the evaluation of the adequacy of financial assurance for closure, post-closure care and perpetual care and maintenance for commercial hazardous waste and radioactive waste treatment, storage and disposal facilities.

A draft Report was initially provided to the Board during the July Board Meeting and discussed in the August Board Meeting. The Board made recommendations during the meeting to revise the Report. The Report was revised based on those recommendations. The revised draft Report is publicly available on the Board's webpage.

A marked version of the changes in the Report and a clean version of the Report were provided to the Board via email identifying where to access the Report on the Division's webpage.

Board members thanked staff for all their efforts in completing the Report. The issue of perpetual care funds for hazardous waste sites was briefly discussed.

It was moved Shawn Milne and seconded by Steve McIff that the Board approve, as presented, the Evaluation of Closure, Post-Closure and Perpetual Care for Hazardous and Radioactive Waste Treatment and Disposal Facilities, Report to the Legislature. Brett Mickelson, Dennis Riding, Danielle Endres, Mark Franc, Jeremy Hawk, and Vern Rogers voted in favor of the motion. Shane Whitney voted against the motion. The Board also requested that, the next time this Report is required, the Board and staff members work earlier in the process to complete the Report.

VII. Other Business.

A. Misc. Information Items.

Shawn Milne thanked Don Verbica and his staff members in their efforts to address some concerns regarding Tooele County.

B. Scheduling of next Board meeting.

The next Board meeting is scheduled for October 13, 2016 at 1:30 p.m. at the Utah Department of Environmental Quality, 195 North 1950 West, Salt Lake City, Utah.

VIII. Adjourn.

The meeting was adjourned at 2:45 p.m.

UST STATISTICAL SUMMARY
September 1, 2015 -- August 31, 2016

| PROGRAM | | | | | | | | | | | | | |
|--|------------------|----------------|-----------------|-----------------|----------------|-----------------|--------------|--------------|--------------|--------------|--------------|---------------|-----------------------|
| | September | October | November | December | January | February | March | April | May | June | July | August | (+/-) OR Total |
| Regulated Tanks | 3,993 | 4,000 | 3,989 | 3,991 | 4,003 | 4,007 | 4,006 | 4,015 | 4,017 | 4,019 | 4,015 | 4,035 | 42 |
| Tanks with Certificate of Compliance | 3,885 | 3,889 | 3,887 | 3,887 | 3,916 | 3,919 | 3,917 | 3,911 | 3,916 | 3,919 | 3,916 | 3,935 | 50 |
| Tanks without COC | 108 | 111 | 102 | 104 | 87 | 88 | 89 | 104 | 101 | 100 | 99 | 100 | (8) |
| Cumulative Facilities with Registered A Operators | 1,333 | 1,334 | 1,333 | 1,332 | 1,333 | 1,333 | 1,332 | 1,332 | 1,324 | 1,327 | 1,325 | 1,320 | 97.42% |
| Cumulative Facilities with Registered B Operators | 1,334 | 1,335 | 1,334 | 1,333 | 1,334 | 1,334 | 1,333 | 1,333 | 1,325 | 1,328 | 1,326 | 1,320 | 97.42% |
| New LUST Sites | 7 | 5 | 4 | 6 | 3 | 4 | 10 | 13 | 4 | 8 | 7 | 5 | 76 |
| Closed LUST Sites | 6 | 9 | 7 | 10 | 9 | 3 | 10 | 2 | 14 | 4 | 11 | 12 | 97 |
| Cumulative Closed LUST Sites | 4848 | 4857 | 4859 | 4867 | 4878 | 4886 | 4889 | 4892 | 4905 | 4913 | 4921 | 4932 | 84 |
| FINANCIAL | | | | | | | | | | | | | |
| | September | October | November | December | January | February | March | April | May | June | July | August | (+/-) |
| Tanks on PST Fund | 2,846 | 2,844 | 2,840 | 2,840 | 2,763 | 2,766 | 2,764 | 2,758 | 2,752 | 2,751 | 2,753 | 2,757 | (89) |
| PST Claims (Cumulative) | 647 | 648 | 649 | 647 | 647 | 649 | 649 | 649 | 651 | 651 | 655 | 655 | 8 |
| Equity Balance | -\$7,810,251 | -\$7,663,788 | -\$7,186,058 | -\$7,441,692 | -\$7,435,326 | -\$7,180,546 | -\$7,535,427 | -\$7,425,420 | -\$8,031,463 | -\$6,636,622 | -\$7,375,813 | -\$7,326,360 | \$483,891 |
| Cash Balance | \$16,211,196 | \$16,357,660 | \$16,835,389 | \$16,406,467 | \$16,412,833 | \$16,667,613 | \$16,375,040 | \$16,422,739 | \$17,142,184 | \$17,376,517 | \$17,213,545 | \$17,974,397 | \$1,763,201 |
| Loans | 0 | 0 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 2 | 1 | 0 | 0 |
| Cumulative Loans | 105 | 105 | 105 | 107 | 107 | 108 | 108 | 108 | 108 | 110 | 111 | 111 | 6 |
| Cumulative Amount | \$3,727,980 | \$3,727,980 | \$3,727,980 | \$3,889,300 | \$3,889,300 | \$3,911,924 | \$3,911,924 | \$3,911,924 | \$3,911,924 | \$4,039,774 | \$4,069,774 | \$4,069,774 | \$341,794 |
| Defaults/Amount | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | | | | | | |
| | September | October | November | December | January | February | March | April | May | June | July | August | TOTAL |
| Speed Memos | 45 | 52 | 38 | 20 | 18 | 10 | 49 | 49 | 61 | 32 | 53 | 52 | 479 |
| Compliance Letters | 3 | 14 | 3 | 6 | 13 | 1 | 5 | 0 | 8 | 7 | 8 | 3 | 71 |
| Notice of Intent to Revoke | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Orders | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 5 | 1 | 0 | 0 | 0 | 8 |

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary Repeal of Rule R313-27 October 13, 2016

| | |
|---|---|
| What is the issue before the Board? | The Board is being asked to approve the repeal of R313-27 and set an effective date. |
| What is the historical background or context for this issue? | <p>R313-27 was adopted by the Radiation Control Board in its final meeting in June 2015. This rule requires the Board to appoint a Medical Use Advisory Committee to review any rule or other policy that affects the medical use of radiation and to make a recommendation to the Board on the proposed rule. The rule establishes the makeup of the committee and requires the committee to report to the Board prior to any Board action on a rule related to the medical use of radiation.</p> <p>The Attorney General's Office (memorandum from Craig Anderson, Assistant Attorney General) has determined that the Radiation Control Board did not have the authority to promulgate R313-27. A copy of the memorandum was provided in the July 14, 2016 Board packet.</p> <p>The proposed repeal of R315-27 was published in the September 1, 2016 Utah Bulletin. Comments received along with the letter sent to the Board prior to the July 14, 2016 meeting are attached. The Director's response to the comments will be provided to the Board in a separate e-mail document.</p> |
| What is the governing statutory or regulatory citation? | 19-6-104 of the Utah Code Annotated provides rulemaking authority to the Board. |
| Is Board action required? | Yes |
| What is the Division Director's recommendation? | The Director recommends that the Board approve the repeal of R313-27 and set the effective date of October 15, 2016. |
| Where can more information be obtained? | For more information, please contact Ralph Bohn at (801) 536-0212 or rbohn@utah.gov |

DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL

Response to comments on the proposed repeal of R313-27

The following summarizes the comments received and the Division's response. The full text of each comment is attached.

Comment:

Several commenters expressed support for the rule and asked the Board not to repeal it.

Division Response:

Notwithstanding the intent of the Radiation Control Board, the Office of the Attorney General determined that the Board did not have the authority to promulgate R313-27. This rule has no legal basis, cannot be implemented and must be repealed.

Comment:

One commenter noted that R313-27 is similar to R317-10-8, which established the "Utah Wastewater Operator Certification Council." The commenter expressed the opinion that R317-10-8 sets a precedent and was used in drafting R313-27.

Division Response:

Rules promulgated by another board did not establish any legal authority for rulemaking by the Radiation Control Board. The Office of the Attorney General determined that the Radiation Control Board did not have the authority to promulgate R313-27.

Comment:

One commenter stated that, during discussions with the sponsor of SB244 (the bill that combined the Division of Radiation Control and the Division of Solid and Hazardous Waste into the Division of Waste Management and Radiation Control and created a new board for the new division), concerns were expressed about the lack of medical representation on the new Waste Management and Radiation Control Board. The commenter states that the sponsor of SB244 said the concerns could be resolved by the promulgation of R313-27.

Division Response:

Statements made in hearings and during discussion of proposed legislation, whether in public or private meetings or during legislative debate, are not statute and cannot be used to justify actions by a board or agency when those actions are not authorized by statute.

Comment:

One commenter provided a memo from Amanda Smith, the Director of the Department of Environmental Quality at the time of the passage of SB244. The memo expresses support for the adoption of R313-27.

Division Response:

Notwithstanding the opinion of the former Director of the Department of Environmental Quality, the Office of the Attorney General determined that the Radiation Control Board did not have the authority to promulgate R313-27.

Comment:

The commenter included comments made to the legislature during the debate surrounding the passage of SB244.

Division Response:

These comments were known to the legislature and were taken into account in the drafting of SB244. SB244 does not contain any language that gave the Radiation Control Board any specific authority to promulgate R313-27.



DRC-2016-010389

Ralph Bohn <rbohn@utah.gov>

[DWMRC Public] AGAINST Repeal of R313-27 Medical Use Advisory Committee

1 message

Sean Jordan <srj5500@gmail.com>
To: dwmrcpublic@utah.gov

Mon, Oct 3, 2016 at 10:26 AM

Dear of Division of Waste Management and Radiation Control:

I am writing to express an opinion AGAINST the repeal of R313-27. The Medical Use Advisory Committee has filled a valuable role to the Division, Board, and most importantly the public who depend on expertise to protect their interests. It is my opinion that discussions, review of legislation or rule, and recommendations will only improve by including experts in the fields of nuclear medicine, health and safety, radiation medical device manufacturing, etc. I believe my experience as consultant, state and federal regulator, business owner, and citizen has allowed me to see the benefits from collaboration on matters of public health and safety. Lack of additional perspective and expertise could result in poor results. I do not believe the public will be harmed by an additional set of eyes. The value of a well-rounded team should not be overlooked.

Sincerely,

Sean Jordan, P.E.
2317 Raelyn Way
Layton, UT 84040
[801-719-3122](tel:801-719-3122)

http://www.deq.utah.gov/Laws_Rules/dshw/proposed-rc-rules.htm

In the August 15, 2016 meeting of the Waste Management and Radiation Control Board the Board approved for filing with the Division of Administrative Rule for publication in the September 1, 2016 Utah Bulletin the proposed repeal of **R313-27**, Medical Use Advisory Committee. Comments on the repeal of **R313-27** should be sent to the Division or to dwmrcpublic@utah.gov by 5 pm on October 3, 2016.

—
You received this message because you are subscribed to the Google Groups "dwmrcpublic" group.
To unsubscribe from this group and stop receiving emails from it, send an email to dwmrcpublic+unsubscribe@utah.gov.
To post to this group, send email to dwmrcpublic@utah.gov.



[DWMRC Public] Public comment on Repeal of R313-27 Medical Use Advisory Committee

1 message

Peter Jenkins <peter.jenkins@hsc.utah.edu> Mon, Oct 3, 2016 at 3:02 PM
To: "dwmrcpublic@utah.gov" <dwmrcpublic@utah.gov>, "standerson@utah.gov" <standerson@utah.gov>, "wmrcboard@utah.gov" <wmrcboard@utah.gov>, "amatheson@utah.gov" <amatheson@utah.gov>
Cc: Ulrich Rassner <Ulrich.Rassner@hsc.utah.edu>, Maryellyn Gilfeather <Maryellyn.Gilfeather@hsc.utah.edu>, J Boseman <Jerald.Boseman@hsc.utah.edu>, Peter Jenkins <peter.jenkins@hsc.utah.edu>, Scott Baird <scottbaird@utah.gov>, Monte Thompson <monte@uda.org>, "Rusty Lundberg (RLUNDBERG@utah.gov)" <RLUNDBERG@utah.gov>

Board members, Mr. Matheson, and Mr. Anderson,

Please find attached our comments regarding the Board Action item to repeal R313-27, "Medical Use Advisory Committee." We look forward to the opportunity to be able to resolve the concerns generated by this rule and its potential repeal.

Sincerely,

Maryellyn Gilfeather, Jerald Boseman, Ulrich Rassner, and Peter Jenkins

October 3, 2016

Waste Management and Radiation Control Board Members:

We urge you to retain R313-27 and maintain the Medical-Use Advisory Committee (MUAC). The MUAC is a resource to the Board and provides medical expertise not currently present on the Board nor formally available to the Division staff. The MUAC is able to provide support and recommendations to the Board in a formal, reliable manner.

Two primary reasons have been given for justification to repeal R313-27: 1) the Radiation Control Board (RCB) did not have the authority to pass R313-27, and 2) the efforts of the MUAC would be unnecessary due to the "scoping" process performed by WMRC Division staff. We disagree with both of these points.

We believe the RCB did have the authority to pass R313-27. At the very least, the memorandum of June 21, 2016 from Craig Anderson represents a different legal opinion of the RCB's authority from that presented to the RCB by the Attorney General's office only a year ago. The most prudent action would be to resolve the difference in legal opinion prior to repealing the rule based on this argument.

We believe that the scoping process can neither replace the MUAC nor satisfy the concerns of medical-users raised at the time of Board reorganization. It should be noted that the scoping process is an informal, discretionary process administered by the Division. Scoping is not part of the Utah Rulemaking Act nor does it carry the same obligations as formal notice and comment processes. Scoping is performed by an agency in order to prepare the recommendations of

the Division to the Board. Thus, by its very nature, scoping cannot replace the Board's or MUAC's expertise or perspective. The MUAC provides medical expertise to the Board to better act on recommendations from the Division. The MUAC cannot replace the Division scoping activities nor can scoping replace the MUAC.

The recent request for exemption of the Sensus SRT machine is an example of how the scoping process is inadequate to provide the medical expertise to the Board to make an informed decision. The initial recommendations to the Board on this issue were based on a very narrow "scoping" which did not seek input of the larger medical community. We note that public comment period on this issue arose out of the Board discussion and was not a recommendation of the Division derived from the scoping process.

Finally, we would like to remind the Board that at the time the WMRC Division was organized, the Medical Community raised serious concerns about SB244 and the makeup of the WMRC Division and Board. In order to address some of these concerns, the DEQ offered the MUAC and committed to its formation either through rule by the then RCB or through Executive Director action. To now repeal this rule without replacement and without involvement from the medical community is not only a violation of trust, but also ignores commitments the DEQ made to the medical community merely a year ago.

In light of the context in which R313-27 was initially adopted and the commitments made by the DEQ at the time, we believe the State and the DEQ have an obligation to the medical users of radiation to ensure their concerns are addressed. If repeal of R313-27 is deemed necessary, an acceptable alternative should be in place before it is repealed. Any alternative to R313-27 must involve the input of the medical community.

Thank you for considering our comments and for all your efforts in serving our State.

Sincerely,

Maryellyn Gilfeather, MD
Utah Radiological Society

J Jerald Boseman, DDS
UofU School of Dentistry

Ulrich Rassner, MD

Peter Jenkins, PhD, CHP, DABR

—
You received this message because you are subscribed to the Google Groups "dwmrcpublic" group.
To unsubscribe from this group and stop receiving emails from it, send an email to dwmrcpublic+unsubscribe@utah.gov.
To post to this group, send email to dwmrcpublic@utah.gov.

 **MUAC - R313-27 Comments.docx**
15K

July 12, 2016

Waste Management and Radiation Control Board
195 N 1950 W
PO Box 144880
Salt Lake City, UT 84114-4880

Dear Board Members:

We are writing to urge you to not repeal R313-27, "Medical Use Advisory Committee." This rule was written by the former Utah Radiation Control Board, with the support of the Utah Attorney General's office, the previous Director of the DEQ, and as a compromise reached between Senator Margret Dayton and medical-users of radiation within Utah. It is our belief that not only was this rule written under the proper authority of the Radiation Control Board, but also there exists ongoing precedence in the DEQ and Administrative Rules for the Board to appoint a Medical Use Advisory Committee. Additionally, in light of the circumstances in which the rule was proposed, we believe that by repealing this rule the Board would betray the trust of those who relied on the word of the past Director of the DEQ and staff members who supported it as a compromise to their opposition to SB244 (2015).

The model for a rule requiring the Board to appoint a committee or council was not unique to the Radiation Control Board when it adopted R313-27. Other examples existing within the Administrative Rules provide precedence for this type of rule. When R313-27 was first written, the general idea of the content of the proposed rule was submitted to Laura Lockhart of the Attorney General's office. In the process of writing the language of the rule, she provided both suggested wording and cited precedence for a rule of this nature. One example in Administrative Rule of an ongoing precedence for the Board to appoint such a committee is R317-10-8, "Utah Wastewater Operator Certification Council". Note that several line items from R317-10-8 were used in drafting the language of R313-27. Thus, it can be shown that R313-27 is not unique within the DEQ's administrative rules, nor is it outside the established role of the Boards to appoint such a committee. If further evidence to this point is required, additional information could easily be found in the Radiation Control Board meetings minutes of that time when Ms. Lockhart provided advice in the public meetings supporting this approach and explain the precedence.

We would also like to remind the Board of the situation and environment from which R313-27 was proposed. As you are well aware, in 2015 Senator Margret Dayton sponsored SB244 which reorganized the Division of Solid and Hazardous Waste and the Division of Radiation Control into a single division and also reorganized the Boards which oversaw these divisions. A significant concern that was voiced by the previous Radiation Control Board and many members of the medical-use community, including the Utah Dental Association and the Utah Radiologic Society, was the lack of medical representation and expertise on the new Board. Based on this, and other objections, a significant number of individuals and professional organizations voiced their opposition to SB244. After much discussion, it was proposed that a Medical Use Advisory Committee be formed whenever an issue affecting the rules governing the medical use of radiation would be brought for Board action. Many individuals felt this compromise should be added to the amended Bill, but the Attorney General's Office, the DEQ Director, and staff members of both the DEQ and Senator Dayton assured the medical users that R313-27 would provide the same effect.

We've attached several documents in support of the points we've raised:

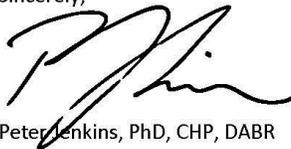
1. March 2, 2015 letter from the DEQ Director, Amanda Smith, stating support for the Medical Use Advisory Committee, citing one example of precedence for such a committee, and her intention to move forward with such a rulemaking action.
2. To remind Board member of the concerns raised by the medical users or radiation, we've also included the letter from the UDA opposing SB244 and the content of the letter provided by the President of the URS (we have since misplaced our copy of the signed letter, but believe the signed copy is available in the past Board minutes as well as in evidence for the SB244 Senate Hearing).
3. And, for convenience, R317-10-8, "Utah Wastewater Operator Certification Council" and R313-27, "Medical Use Advisory Committee"

We believe these documents illustrate the points we've raised, but have additional documents and email conversation chains that could be made available to provide additional evidence and context to the Board if it would be helpful.

Again, we urge you to retain R313-27. Not only was it appropriately written within the scope of the Radiation Control Board's authority, but it had wide support from the DEQ Director, Senator Dayton, and members of the medical-use committee. To repeal this rule so soon after it was adopted, and under the conditions it was adopted, would be a betrayal of the trust between the State and the individuals who accepted it as a compromise to their objections to SB244.

Thank you for your time and consideration of these points. We can make myself available to the Board if we could be of any assistance in providing further context to your consideration of retaining or repealing R313-27.

Sincerely,



Peter Jenkins, PhD, CHP, DABR

Po Box 782
Kaysville, UT 84037



Ulrich Rassner, MD

548 E. North Hills Dr
Salt Lake City, UT 84103



Amanda Smith
Executive Director

March 2, 2015

To Whom It May Concern:

In last week's hearing on SB 244, the Department of Environmental Quality became aware of questions and concerns within the Dental, Medical and Radiological communities concerning the potential lack of expertise to address rulemaking when there is potential for rules to affect the medical use of radiation.

Other Boards that work with the Department have addressed the need for special expertise through "Advisory Task Forces," or special groups that inform the rulemaking process. For example, our Solid & Hazardous Waste Control Board has an "Underground Storage Tank Advisory Task Force" consisting of interested Board members as well as stakeholders that represent a broad range of industry and non-industry specifically concerned with Underground Storage Tanks.

We believe that a similar "Medical-use Advisory Task Force," made up of medical practitioners from the areas most affected by rulemaking would help to provide the Board with the insight and expertise needed. In the event a rulemaking activity by the Board has the potential to affect the medical use of radiation, this "Medical-Use Advisory Task Force" could provide expertise, suggest rule language and/or recommend actions to the Board.

While the Board currently has the authority to create such a task force, the Department supports further action to formally create by rule a "Medical-use Advisory Task Force" under the proposed, "Waste Management and Radiation Control Board." We will move forward with this approach through rule, after July 1 when the changes from this legislation take place.

The Department confirms our commitment to maintaining a rulemaking process that is informed and that adequately addresses the issues that come before the Board with the necessary expertise.

Thank you for your commitment to working with us now, and in the future, as we make this process work as effectively as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda Smith".

Amanda Smith

Protecting and Enhancing Utah's Environment and Quality of Life

1151 E 3900 S 160
Salt Lake City UT 84124
801-261-5315, 800-662-6500
Fax 801-261-1235
uda@uda.org
www.uda.org



Utah Dental Association

February 25, 2015

Re: Regulatory Oversight of Radiation Use in Utah, SB 244

Honorable Utah State Senators,

Our association of 1600 dentists urges you to vote against SB 244 which would consolidate the Division of Radiation Control and the Division of Solid and Hazardous Waste into one Division of Waste Management. In our view SB 244 would diminish the input of experts in the field of radiation and would significantly impact many applications of radiation use in Utah.

We think:

- more analysis of this change is needed
- only one seat would be available for a physician or dentist
- a new Waste Division would not represent the distribution of use and dose radiation in Utah, nor acknowledge the differences in use
- a new Waste Division would not reflect understanding of the beneficial uses of radiation to medical patients for diagnoses and treatment
- SB 244 does not adequately address the unique nature of radiation use and hazards
- proper use of radiation requires oversight by highly specialized, properly credentialed professionals who are not found in waste management
- unique challenges arise from radiation uses that cannot be managed by a new Division focused on waste issues
- the proposals in SB 244 have not been discussed by the majority of radiation consumers

We strongly recommend that Utah maintain a Division of Radiation Control separate from a Division of Solid and Hazardous Waste. At very least we think this issue should be studied longer and more thoroughly before voting on possible consolidation.

Sincerely,

UDA Board of Directors

Dr. James Bekker, Sandy

Dr. Glenn Zeh, Layton

Dr. Mark Cowley, Ogden

Dr. Val Radmall, Ogden

Dr. Gary Wiest, Provo

Dr. A. J. Smith, Murray

Dr. Brent Larson, Salt Lake

Dr. Jim Williamson, Murray

Dr. LaRisse Skene, S Jordan

[Sender's Address]

[Date]

[Recipient's Address]

Subject: Regulatory Oversight of the use of Radiation within Utah

[Salutation]

[I/We] appreciate the opportunity to comment on the proposed language in SB244, which would consolidate the Department of Radiation Control and the Department of Solid and Hazardous Waste and their respective boards into one department of Waste Management with one accompanying board. This department and board would then also be tasked to administer the Radiation Control Act. The bill's emphasis centers on radioactive waste-related issues while minimizing other types of radiation use within the State, particularly in the field of the healing arts. More specifically, SB244 fails to recognize and to address the beneficial applications of radiation within diagnostic medicine, nuclear medicine, and radiation therapy in the organization of both the proposed Waste Division and Waste Board. If implemented, this bill would diminish the input of experts in the field of Radiation Control to the Department and have a significant impact on many applications of radiation use within the State, but has received little or no input from many of the affected parties and industries. Therefore, the legislature should delay a decision on SB244 and request an in-depth analysis to be completed on the full impact of the proposed legislation, while seeking input from all stakeholders across the full spectrum of radiation use.

Because the proposed organization of the Waste Division and Waste Board does not adequately reflect the use of radiation within the State, further analysis of unintended consequence is of utmost importance. Consider that at the end of 2014, there were 204 licenses issued allowing the use of radioactive materials. Of these, 46 were Medical Licenses while only 3 were related to waste disposal. Additionally, there are approximately 9,000 x-ray machines registered in the State of Utah; of those, approximately 90% are used in the practice of medicine. These x-ray machines are maintained in over 2,700 facilities 87% of which are used in medical practice, 6% in veterinary medicine and 7% in other industries. Although low level radioactive waste (LLRW) disposal and Uranium milling operations only account for only 3 radioactive materials licensees, they would occupy three permanent seats on the proposed Waste Board, compared to only one seat to be filled by an individual who is a medical doctor or dentist.

The proposed makeup of the Waste Division and Waste Board do not reflect the actual distribution of the use radiation and radiation dose on the population of the State and does not adequately acknowledge the differences in use. While a LLRW facility must

limit the dose to a member of the public to 25 mrem in a year; a medical licensee may deliver up to 100 mrem in special circumstances 500 mrem in a year to non-patients. A thorough understanding of these issues, rather than simply considering radiation from all sources in the same manner from a regulatory perspective, is insufficient to effectively address radiation issues within Utah.

The proposed organization of the board does not reflect understanding of the beneficial uses of radiation to medical patients, in the form of medical diagnoses and treatment of disease, because the Waste Board would be mainly comprised of individuals whose main qualifications and focus is on waste products. SB244 requires that “a member of the board shall: (a) be knowledgeable about solid and hazardous waste matters as evidenced by a professional degree, a professional accreditation, or documented experience” (19-6-103(2)). Yet, no such expertise is required in the area of radiation protection of patients nor is training and experience required in any of the other areas of radiation and radioactive material uses save for the single representative member proposed with a background in public health.

Furthermore, the proposed legislation does not adequately address the unique nature of radiation use and hazard within Utah. While the Divisions of Air Quality, Drinking Water, and Environmental Response would be maintained under the proposed legislation, Radiation Control and Solid and Hazardous Waste are folded into a single Division. While it is true that there are elements of radioactive waste disposal that are shared in common with other forms of solid and hazardous waste, this is not true for the vast majority of radiation use within the State. Proper use of radiation requires the involvement of highly specialized and properly credentialed professionals. The challenges posed by the different uses of radiation are too great to imagine that individuals focused on waste disposal could adequately address these disparate concerns.

It has been suggested that the regulatory organization in Colorado similarly places the regulation of radiation issues within their Hazardous Material and Waste Management Division. However, even though the Division also oversees waste issues, Colorado has recognized the importance of radiation issues and the unique nature of radiation concerns and maintains a Radiation Advisory Committee. The Committee consists of nine members equally represented from the areas of healing arts, higher education, and industry. At a minimum, Utah should similarly recognize the unique challenges posed by radiation uses and not expect to be able to successfully manage all types of radiation use from a board and division focused on waste issues.

Finally, many of the proposals made in SB244 have been made in the absence of input from the majority of radiation consumers in Utah. Not only does the proposed legislation not reflect the varying interests of the different uses, but also is a disservice to the people of Utah by only addressing the waste aspects of radiation use. Based on the current wording of SB244, it would appear that only one type of radiation use was

considered in forming the proposed bill. Some regulated industries may look on these conditions in a positive manner by expecting a lower level of regulatory oversight, but in the case of the highly regulated areas of the Medical Use of Radiation, the likelihood of improper regulation can have a devastating impact on not only the radioactive materials licensees and x-ray machine registrants, but on the patients these regulated users seek to help. The legislature should reconsider the changes proposed in SB244 after proper input, rather than through rushed legislation that will significantly alter state law with unintended consequences.

Radiation does have many beneficial uses. Used in medical diagnosis radiation therapy for the treatment of diseases, radiation saves lives and significantly improves the quality of life of patients in Utah. The implied message that medical uses of radiation are insignificant enough to permit their oversight by individuals with no medical training or experience degrades the professional practice of thousands of medical professionals in Utah. Permanent membership for the Radiation Control Board should represent all users of radiation within the State including medical physicists, radiologists and radiation oncologists. Additional membership should reflect the number and types of radiation use.

Until these fundamental issues are expertly examined in greater detail, we strongly recommend that Utah maintain a separate Division of Radiation Control and that the Radiation Control Board remain separate from the Solid and Hazardous Waste Board. We appreciate all efforts to ensure that Utah is governed in the most effective and beneficial manner for the residents of this state and we look forward to working together on a collaborative solution to the many challenges ahead.

Sincerely,

[Name, signature]

R317-10-8. Utah Wastewater Operator Certification Council.

A. Membership.

1. Members of the council shall be appointed by the board.

a. Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Rural Water Association of Utah, and the Civil and Environmental Engineering Departments of universities in Utah.

b. The council shall serve at the discretion of the board to oversee the certification program in an advisory capacity to the director as provided in this rule.

2. The council shall consist of seven voting members and should include representation from interest groups as follows:

a. four members who are operators holding valid certificates, with at least two members being wastewater collection system operators and two members being wastewater treatment system operators;

b. one member with at least three years of management experience in either wastewater treatment, collection, or both, who represents municipal wastewater management;

c. two members who are at large and may represent:

(1) an educational institution in Utah;

(2) those who are currently certified as wastewater operators in the private sector; or

(3) vocational training.

3. At least two non-voting division staff should be in attendance at any council meeting.

4. Voting council members shall serve as follows:

a. terms of office shall be for three years with two members retiring each year, except for the third year when three shall retire;

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

c. appointments to succeed a council member who is unable to serve his full term shall be for the remainder of the unexpired term; and

d. council members may be reappointed, but they do not automatically succeed themselves.

5. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

6. Each year the Council shall elect from its membership a Chair and Vice Chair.

B. Duties of the council shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of

individual exam databank items;

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval;

3. assisting in administering examinations at various locations;

4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director;

5. providing advice and recommendations for CEU approval; and

6. preparing an annual report of certification program activities for distribution to the board and other interested parties.

KEY: water pollution, operator certification, wastewater treatment, renewals

Date of Enactment or Last Substantive Amendment: April 29, 2015

Notice of Continuation: July 11, 2012

Authorizing, and Implemented or Interpreted Law: 19-5

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-27. Medical Use Advisory Committee.

R313-27-1. Formation and Role of Medical Use Advisory Committee.

(1) The board shall appoint a Medical Use Advisory Committee to review and make recommendations prior to a board action for any rule or other policy matter that affects the medical use of radiation. Committee members shall be appointed after considering recommendations from affected groups or individuals.

(2) The Medical Use Advisory Committee shall consist of at least three members, with the majority of members from an area of medical use affected by the rulemaking action.

(3) Members may include non-physician professionals if the member's professional credentials are applicable to the scope of the matter being considered.

(4) Members may include board members.

(5) The Medical Use Advisory Committee shall, by majority vote, provide recommendations and, as appropriate, suggested rule language to the board. Minority recommendations and suggested rule language, if any, shall also be provided to the board.

(6) This rule shall not apply to emergency rulemaking under Section 63G-3-304.

KEY: medical use advisory committee, medical use of radiation
Date of Enactment or Last Substantive Amendment: July 9, 2015
Authorizing, and Implemented or Interpreted Law: 19-3-103.5;
19-3-104(4)

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Proposed Changes to R315-15-13

October 14, 2016

| | |
|---|--|
| What is the issue before the Board? | <p>The Board is being asked to approve, for publication in the Utah Bulletin and commencement of a 30-day public comment period, proposed changes to the Used Oil Rules, R315-15-13.</p> |
| What is the historical background or context for this issue? | <p>R315-15-13 is the section of the Used Oil Program Rules that covers the registration and permitting of used oil handlers.</p> <p>Subsection R315-15-13.4(f) allows generators of used oil to transport quantities of exceeding 55 gallons under a permit by rule. The permit by rule exemption is limited to facilities that fall within certain North American Industry Classification System codes.</p> <p>The Division has been approached by Rocky Mountain Power asking if the utilities sector code could be added to the list in the rule. Rocky Mountain Power generates large amounts of used oil, some of which is located in remote locations where it is difficult or impossible to get a used oil transporter to pick up the oil.</p> <p>This change would allow any utility to transport their oil under permit by rule. The change also updates reference to the current version of the North American Industry Classification System.</p> |
| What is the governing statutory or regulatory citation? | <p>19-6-704 of the Utah Code Annotated provides authority to Board for rulemaking for and administration of the Used Oil Program.</p> |
| Is Board action required? | <p>Yes.</p> |
| What is the Division Director's recommendation? | <p>The Division Director recommends that the Board approve, for publication in the Utah Bulletin and commencement of a 30-day public comment period, proposed changes to the Used Oil Rules, R315-15-13.</p> |
| Where can more information be obtained? | <p>For more information, please contact Deborah Ng at (801) 536-0218 or by email at dng@utah.gov</p> |

NOTICE OF
PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Office of Administrative Rules.

| | |
|---|-------------|
| Rule Information | |
| DAR file no: | Date filed: |
| State Admin Rule Filing Key: 157896 | |
| Utah Admin. Code ref. (R no.): R315-15-13 | |

| | | | | |
|---|---|--------------|----------------|---------|
| Agency Information | | | | |
| 1. Agency: | ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ... | | | |
| Room no.: | Second Floor | | | |
| Building: | | | | |
| Street address 1: | 195 N 1950 W | | | |
| Street address 2: | | | | |
| City, state, zip: | SALT LAKE CITY UT 84116-3097 | | | |
| Mailing address 1: | PO BOX 144880 | | | |
| Mailing address 2: | | | | |
| City, state, zip: | SALT LAKE CITY UT 84114-4880 | | | |
| Contact person(s): | | | | |
| Name: | Phone: | Fax: | E-mail: | Remove: |
| Ralph Bohn | 801-536-0212 | 801-536-0222 | rbohn@utah.gov | |
| (Interested persons may inspect this filing at the above address or at DAR during business hours) | | | | |

| |
|--|
| Rule Title |
| 2. Title of rule or section (catchline): Registration and Permitting of Used Oil Handlers |

| |
|------------------------------|
| Notice Type |
| 3. Type of notice: Amendment |

Rule Purpose

4. Purpose of the rule or reason for the change:
Add an NAICS code to the list of facilities described by NAICS code that can self transport used oil in quantities exceeding 55 gallons. Update the NAICS code referred to in the rule. The rule change was requested by a large utility operating in Utah.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.
 No Yes

Rule Summary

6. Summary of the rule or change:
Modify R315-15-13.4(f)(1)(i) to change the reference to the NAICS code from the 2007 to the 2017 revision, and add the code for utilities, 22, to the list of facilities types that can transport their own used oil in quantities larger than 55 gallons.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:
Affected: No Yes
The change will not affect on the administration of the used oil program and therefore will have no cost or savings to the State.

B) Local government:
Affected: No Yes
Local governments are not affected by the change and would see no increased costs or nor will any savings result from the change.

C) Small businesses:
Affected: No Yes
("small business" means a business employing fewer than 50 persons)
No small businesses are covered by the NAICS code being added, therefore, no costs or savings will result for the change.

D) Persons other than small businesses, businesses, or local government entities:
Affected: No Yes
("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)
Any utility that generates over 55 gallons of used oil will save the cost of paying a transporter to collect the used oil. The savings is between \$0.30 and \$0.90 per gallon. The aggregate savings is unknown as the amount of used oil that will be transported by utilities under the rule change is not known.

Compliance Cost Information
8. Compliance costs for affected persons:
The rule change will decrease compliance costs.

Department Head Comments
9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
The rule change will allow utilities in Utah to transport their own used oil allowing them to save the cost of hiring a used oil transporter to collect and transport the used oil to a used oil recycler.
B) Name and title of department head commenting on the fiscal impacts:
Alan Matheson

Citation Information
10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.
State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :
Section 19-6-704

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by reference (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)
 Publisher
 Date Issued (mm/dd/yyyy)
 Issue, or version (including partial dates)
 ISBN Number
 ISSN Number
 Cost of Incorporated Reference
 Adds, updates, removes-- SELECT ONE --

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 12/01/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 12/08/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous waste, used oil

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and Scott Anderson
title: Director Date (mm/dd/yyyy): 09/14/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-15. Standards for the Management of Used Oil.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A AND B

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) the type of storage and secondary containment to be used;
- (4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;
- (5) a spill containment plan in the event of a release of used oil; and
- (6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

- (1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;
- (2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;
- (3) The storage tank or container is clearly labeled with the words "Used Oil;"
- (4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;
- (5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and
- (6) Oil sorbent material is readily available on site for immediate clean-up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

- (1) the name and address of the operator;
- (2) the location of the center;
- (3) whether the center will accept DIYer used oil;
- (4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director if that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Director as a generator collection center and comply with the standards in R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) A closure plan meeting the requirements of R315-15-11;

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

(i) Personal safety equipment;

(ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;

(iii) A minimum number and qualification of workers involved in the loading or off-loading operations;

(iv) Braking and blocking of rail car wheels;

(v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process,

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations;

and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

- (1) the EPA identification number, name, and address of the transporter/transfer facility;
- (2) the calendar year covered by the report;
- (3) the total amount of used oil transported;
- (4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and
- (5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transportes used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published, in ~~2007~~2017 Revision, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 22 (Utilities), 23 (Construction), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transportes and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1) and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transportes used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

(13) A closure plan meeting the requirements of R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Department fee schedule 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1 of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.6 USED OIL BURNERS

(a) On-specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Director for the purpose of R315-15-13.6, if they hold a valid air quality operating order or are exempt under R315-15-2.4.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) The name and address of the operator;

(ii) The location of the facility;

(iii) The type of containment and type and capacity of storage;

(iv) The type of burner to be used;

(v) The methods of disposing of any waste by-products;

(vi) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of R315-15-11;

(xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(xii) Tank certification in accordance with R315-264-190 through 200 for used oil storage tanks at the processor facility; and

(xiii) A facility piping and instrument drawing certified by a Professional Engineer.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Director. Notwithstanding any other provisions of R315-15-13.6, a hazardous waste incinerator facility that has been issued a final permit under R315-270-1, and that implements the requirements of R315-264-340 through 351, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) It burns off-specification used oil only in devices specified in R315-15-6.2(a);
(ii) It stores used oil in the manner described in R315-15-6.5;
(iii) It tracks off-specification used oil shipments as described in R315-15-6.6;
(iv) It complies with R315-15-6.3 and R315-15-6.7;
(v) It modifies its closure plan required under R315-264-110 through 120 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) It modifies its financial mechanism or mechanisms required R315-264-140 Through 151 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It submits to the Director the information required by R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Director of their activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(i) The EPA identification number, name, and address of the burner facility;

(ii) The calendar year covered by the report; and

(iii) The total amount of used oil burned.

(c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in R315-15-7, without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Sampling and Analysis Plan. Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) Specification used oil fuel. The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) Analytical methods. The plan shall specify the preparation and analytical methods for each parameter.

(iii) PCBs. The analysis plan shall describe how the marketer will comply with R315-15-18.

(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-261 Appendix I, or a method shown to be equivalent under R315-260-21.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(c) Registration fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate without a used oil handler certificate.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.7, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4 through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

(1) business name;

(2) address to include:

(i) mailing address; and

(ii) site address if different from mailing address

(3) telephone number

(4) name of business owner;

(5) name of business operator;

(6) permit/registration number; and

(7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

- (1) completion and approval of the application required by R315-15-13.8(a); and
- (2) payment of the fee required by the Annual Appropriations Act.
- (e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.
- (f) The certificate registration fee shall be paid prior to operation within any calendar year.

KEY: hazardous waste, used oil

Date of Enactment or Last Substantive Amendment: November 12, 2015

Notice of Continuation: March 10, 2016

Authorizing, and Implemented or Interpreted Law: 19-6-704

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Request for an exemption from the Rule R313-28-31(5)

October 13, 2016

| | |
|---|--|
| What is the issue before the Board? | Dr. Erik Natkin has requested an exemption from Rule R313-28-31(5). This rule governs the use x-rays in the healing arts and reads: “Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.” |
| What is the historical background or context for this issue? | The basis for the exemption request was provided in a letter to the Director received September 2, 2016 (attached). The Division requested comments on the exemption request from several radiation safety officers and other health care professionals in the state. No comments have been received to date. |
| What is the governing statutory or regulatory citation? | Utah Administrative Code R313-12-55(1) authorizes the Board to grant exemptions from its administrative rules. |
| Is Board action required? | Yes. |
| What is the Division Director’s recommendation? | The Director recommends that the Board grant the exemption. The Director also recommends that, should the Board approve the request, its motion contain the following wording: “The request of Dr. Erik Natkin for an exemption from R313-28-31(5) is granted. The exemption has no expiration date. The exemption granted by the Board is from the requirements of R313-28-31(5) only and not from any other applicable part of R313-28, including the plan review requirements of R313-28-32, the operator protection requirements of R313-28-52(8)(b) and the source-to-skin distance limit of R313-28-53.” |
| Where can more information be obtained? | For more information, please contact Lisa Mechem at (801) 536-4286. |

August 30th, 2016

Div of Waste Management
and Radiation Control

SEP 02 2016

DRC-2016-009746

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Ref: portable X-ray machine exemption

Mr. Anderson,

I have been in correspondence with Lisa Mechem regarding my future radiographic needs and Utah requirements for a new medical office I intend to open over the next two months. Per our conversations, I write this letter to you in request for an exemption to the use of a portable x-ray device rather than a stationary x-ray device. The specific Utah code in question is R131-28-31 that states:

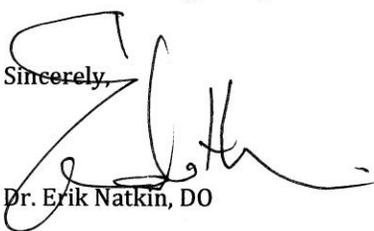
"(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation."

I understand the potential reservations of the use of a portable device, specifically the potential for use in multiple rooms and thus questionable radiation exposure management. I stress that this type of use is not my intent. My intent is to position and use this device in a designated leaded room, practically making it a stationary device and thus compliant with potential radiation exposure management dictated by Utah code.

My request has to do with the associated increased costs and space requirements with a stationary device. Stationary radiographic devices require a multi-phase power source that most buildings do not possess and would require the need to be wired and the likely potential need for an additional transformer opposed to a portable device that requires a wall socket. In addition, a minimum room size of 12 foot by 12 foot would be required as compared to a 7 by 8 foot room.

As you can imagine, starting a new medical practice has significant start-up costs and this solution would markedly reduce some of this burden. With my proposed setup, radiation safety management would be no different than with a stationary device. I truly appreciate your consideration regarding this matter. If you have any questions, please feel free to contact me.

Sincerely,


Dr. Erik Natkin, DO