

MEETING MINUTES APPROVED NOVEMBER 9, 2023

Waste Management and Radiation Control Board Meeting Minutes
Utah Department of Environmental Quality
Multi-Agency State Office Building (Conf. Room #1015)
195 North 1950 West, SLC
October 12, 2023
1:30 p.m.

Board Members Participating at Anchor Location: Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Jeremy Hawk, Dr. Steve McIff, Kim Shelley, Vern Rogers, Shane Whitney

Board Members Participating Virtually: Mark Franc, Nathan Rich, Scott Wardle

Board Members Excused/Absent: Dr. Richard Codell, Danielle Endres

UDEQ Staff Members Participating at Anchor Location:

Brent Everett, Doug Hansen, Morgan Atkins, Elizabeth Burns, Brenden Catt, Tyler Hegburg, Jalynn Knudsen, Arlene Lovato, Judy Moran, Stevie Norcross, Mike Pecorelli, Bret Randall, Elisa Smith, Brian Speer

Others Attending at Anchor Location: Ben Bernett, Steve Gurr, Eric Jorgensen

Other UDEQ employees and interested members of the public also participated either electronically or telephonically. This meeting was recorded.

I. Call to Order and Roll Call.

Chairman Mickelson called the meeting to order at 1:30 p.m. Roll call of Board members was conducted; see above.

II. Public Comments on Agenda Items – None.

III. Declaration of Conflict of Interest.

Vern Rogers announced he will abstain from voting on Agenda Item VIII (A.& B.)

IV. Approval of the meeting minutes for the September 14, 2023 Board meeting (Board Action Meeting).

It was moved by Dennis Riding and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the September 14, 2023 Board meeting minutes.

V. Petroleum Storage Tanks Update.

Brent Everett, Director, Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Fund for the end of September 2023, is \$32,491,241.00. The DERR continues to watch the balance of the PST Fund closely to ensure sufficient cash is available to cover qualified claims for releases. There were no comments or questions.

VI. FY2023 Petroleum Storage Tanks Fund Actuarial Review (Information Item).

Michael Pecorelli, Division of Environmental Response and Remediation (DERR), Environmental Assurance Program Section Manager, presented information on the annual actuarial report for the PST Fund. Information presented shows the PST Fund is in a positive equity balance and continuing to trend in a positive direction. With the recent addition of aboveground petroleum storage tanks (APSTs) to the PST Fund, there could be changes to future predictions.

Dennis Riding asked for clarification on the projected costs to close claims and the projection for the number of releases per year. Mr. Pecorelli stated that the predictions are typically fairly close for the next year unless

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there is a catastrophic release. Chairman Mickelson and Mr. Riding are both encouraged by the positive equity balance of the PST Fund. Brent Everett stated that the PST Fund reached a positive equity balance eleven months ago. He confirmed that predictions are fairly accurate for the near future but it is hard to predict reliably beyond a few years. Mr. Riding also asked about the 50-million-dollar cap prediction for the equity balance of the PST Fund in the next several years. Mr. Everett stated that while there is concern due to the amount that would be collected into the PST Fund, that future prediction is unknown due to a lack of information about how APSTs will affect the PST Fund balance.

VII. Administrative Rules.

A. **Proposed changes to the Utah Solid and Hazardous Waste Rules R315-124, R315-301, R315-302, R315-304, R315-306, R315-309, R315-310, R315-311, R315-315 and R315-320 of the Utah Administrative Code (Information Item).**

Brian Speer, Solid Waste Section Manager in the Division of Waste Management and Radiation Control (Division), reviewed proposed changes to the Utah Solid and Hazardous Waste Rules R315-124, R315-301, R315-302, R315-304, R315-306, R315-309, R315-310, R315-311, R315-315 and R315-320 of the Utah Administrative Code (UAC) as an informational item to the Board.

Mr. Speer informed the Board that at their next Board meeting, the Division seek Board action to proceed with formal rulemaking and public comment on the proposed rule changes identified above.

Mr. Speer stated the proposed changes will correct rule and statutory references and language, clarify rule language, remove requirements that are no longer necessary, add some new requirements to the rules, and add language and requirements to rules as required by legislation passed by the Utah Legislature. The solid waste rules have not been updated or amended for several years, and the purpose of this rulemaking is to bring the rules up-to-date and fix errors in the rules. There are several statutory citations in the rules that are not correct because the statutes have been amended and the numbering has changed. These citations are being corrected. Also, several rule citations were found to be incorrect, and those are also being corrected. Clarifying language is being added in several places in the rules to assist the regulated community in implementing the rules. The Utah Legislature passed bills in 2011, 2013, 2014, 2017, 2019, 2020, and 2021 that made changes to the solid waste program. These changes are being codified in rule with these amendments. Utah Administrative Code R315-311 is being amended to require the Division to follow the requirements of UAC R315-124 when an application for a solid waste facility permit is received, modified, revoked, or terminated. Following the requirements of UAC R315-124 will improve the public participation process for these types of actions. Additionally, the Division is fixing typographical and formatting errors found in the rules as requested by the Governor's Office.

The Board is authorized under Subsection 19-6-105 to make rules that establish minimum standards for protection of human health and the environment for the treatment and disposal of solid waste. The rule changes also meet existing UDEQ and state rulemaking procedures.

This is an informational item for the Board. Board action on this proposed rulemaking will be required at a future Board meeting.

Mark Franc asked when the Board will see language regarding the proposed rule changes. Mr. Speer stated that the draft rule changes will be provided to the Board in their next Board packet.

Vern Rogers asked if there were any of the rule changes made in response to changes in rules by the U.S. EPA (federal level). Mr. Speer answered no.

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VIII. Low-Level Radioactive Waste.

- A. **EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to macroencapsulate and dispose of waste containing high concentrations of arsenic in quantities greater than 1,000mg/L that cannot be treated to the specified treatment standard (Board Action Item).**

Tyler Hegburg, Environmental Scientist, Low-Level Radioactive Section, Division of Waste Management and Radiation Control, reviewed EnergySolutions' request for a site-specific treatment variance.

Mr. Hegburg stated that during the September 14, 2023 Board Meeting, EnergySolutions presented to the Board as an information item a request for a site-specific treatment variance from Utah Administrative Code (UAC) R315-268-40(a)(3) to dispose of waste containing high concentrations of arsenic in quantities greater than 1,000mg/L that cannot be treated to the specified treatment standards by macroencapsulation.

This variance request is to dispose of approximately 250 cubic feet of Natural Gas Sweetener Filter Media (clay pellets) and rinse water that will be characteristically hazardous for arsenic, cadmium, and benzene. Sample analysis of waste received in June 2023 detected arsenic at 14,400 mg/L in the aqueous liquid phase (approx. 20 cubic feet) and 4,600 mg/L in the solid phase.

Following site processes knowledge, EnergySolutions proposes to first treat the waste such that all hazardous waste contaminants, except arsenic, are at or below the respected treatment standards described in UAC R315-268 for Universal Treatment Standards and then macroencapsulate the residual waste in accordance with Part B Permit requirements for macroencapsulation to ensure protection of public health and the environment.

Mr. Hegburg explained the reason behind not treating the arsenic to its respective treatment standards of 5.0 mg/L is because this media being clay pellets is far coarser than the media used in developing the treatment standard, making it much more difficult to appropriately mix the reagent in with the waste streams media. Furthermore, the formula to treat the arsenic is a 5:1 waste ratio, meaning large amounts of absorbent material will be needed to meet the treatment standard. This would bring into question whether actual treatment was occurring or whether dilution was causing the reduction in the arsenic concentration. As an alternative, EnergySolutions proposes to first treat all waste not meeting Universal Treatment Standards to their Permit requirements other than arsenic; then EnergySolutions will macroencapsulate the waste in its final designated location within their mixed waste landfill cell.

Additionally, similar variance requests were made and approved by the Board for this waste stream in January of 2016 and December of 2019.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News, and the Tooele County Transcript Bulletin on August 31, 2023. The 30-day public comment period began August 31, 2023 and ended September 29, 2023. No public comments were received.

This is a Board action item. The Director recommends approval of this variance request. The Director's recommendation is based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance and will be as safe for human health and the environment as the required method.

Shane Whitney asked if the waste is placed in a vault or drum prior to macroencapsulation.

Mr. Hegburg stated the waste is placed in a vault prior to macroencapsulation.

It was moved by Scott Wardle and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to macroencapsulate and dispose of waste containing high concentrations of arsenic in quantities greater than 1,000mg/L that cannot be treated to the specified treatment standard. (Vern Rogers abstained from voting on this matter.)

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B. EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rule UAC R315-268-40(a)(3) to receive incinerator ash containing dioxan/furan contaminants above Universal Treatment Standards (Board Action Item).

Mr. Hegburg reviewed EnergySolutions' request for a site-specific treatment variance. Mr. Hegburg stated that during the September 14, 2023 Board Meeting, EnergySolutions presented to the Board as an informational item a request for a site-specific treatment variance from the Utah Hazardous Waste Management Rule UAC R315-268-40(a)(3) to receive incinerator ash containing dioxan/furan contaminants above Universal Treatment Standards. The incinerator ash waste meets all treatment standards except those wastes containing dioxan/furan contaminants as underlying hazardous constituents (UHCs). Requiring the waste to meet the dioxin and furan treatment standards is inappropriate based on the processes that generate the waste, which is incineration. Because of the waste generation processes, all the ash waste contains dioxins and furans; however, in accordance with regulations, only a portion of the waste needs to be treated for those contaminants.

The generator has previously analyzed each container of ash for metals contamination. If metals were below the toxicity characteristic concentrations described in 40 CFR 261.24 (R315-261-24), the waste would be shipped to the Clive facility as Low-Level Radioactive Waste (LLRW) and disposed in the Class A Embankment. If metals were above the Toxicity Characteristic concentrations, then the waste would need to be treated for those metals as well as all UHCs, including dioxins and furans. It is inappropriate to require treatment of dioxin and furan contaminants in instances where characteristic metals are found in the waste when treatment is not required if metals are below characteristic concentrations in the waste.

Furthermore, the stabilized ash was re-incinerated as an attempt to reduce the concentration of dioxins and furans in the ash. However, re-incineration resulted in a very minor reduction in the concentrations of dioxan and furan contaminants. Making the re-incineration process inappropriate to require an additional step in order to attempt to meet these treatment standards prior to disposal.

EnergySolutions proposes to confirm the waste meets all required treatment standards with the exception of the dioxin and furan UHCs and then microencapsulate the residue in MACRO Vaults using requirements approved in the state-issued Part B Permit. Final disposal of the incinerator ash will occur in the Mixed Waste Disposal Cell at the EnergySolutions' Mixed Waste Facility.

EnergySolutions' request for this same variance request was approved previously in 2018, 2019, 2021, and 2022. Over the previous year while this variance was in effect, the EnergySolutions' Clive facility received approximately 30 tons (eight shipments) of this ash for treatment. EnergySolutions forecasts similar amounts of this waste over the next year.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News, and the Tooele County Transcript Bulletin on August 31, 2023. The 30-day public comment period began August 31, 2023 and ended September 29, 2023. No public comments were received.

This is a Board action item. The Director recommends approval of this variance request. The Director's recommendation is based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance and will be as safe for human health and the environment as the required method.

Nathan Rich asked a question regarding public comment and the publication of the public notice. Information presented stated the public notice was published in the Salt Lake Tribune, the Deseret News, and the Tooele County Transcript Bulletin (local newspapers) and asked if the public notice was also published on the Utah Public Notice Website (UPNW) and should it be. Mr. Hegburg stated he believes it is also published on UPNW. Mr. Rich stated that it might be interesting to add this information to the summary if it is indeed published on UPNW. Mr. Hegburg stated he will add it accordingly to the next summary.

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It was moved by Dennis Riding and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve EnergySolutions' request for a site-specific treatment variance from the Utah Hazardous Waste Management Rule UAC R315-268-40(a)(3) to receive incinerator ash containing dioxan/furan contaminants above Universal Treatment Standards. (Vern Rogers abstained from voting on this matter.)

IX. Proposed Stipulation and Consent Order between the Director and Utah State University (Information Item).

Judy Moran, Environmental Scientist/Inspector, Hazardous Waste Section, Division of Waste Management and Radiation Control, presented proposed Stipulation and Consent Order (SCO) No. 2207086 to resolve Notice of Violation and Compliance Order (NOV/CO) No. 2108087, issued to Utah State University (USU) on April 8, 2022 to the Board as an informational item

The NOV/CO was based on information documented during an inspection at the USU campus in Logan, Utah on August 11, 2021. The thirteen violations identified in the NOV/CO have been resolved.

The SCO includes a total penalty of \$28,409.00. Utah State University will pay 10% of the total penalty as a monetary penalty of \$2,840.90, the remaining \$25,568.10 may be credited toward the total penalty of \$28,409.00 if USU completes a supplemental environmental project (SEP). Utah State University is proposing to add 80 solar panels to an existing solar array on the gateway parking terraces roof. The estimated cost of purchasing and installing the 80 panels is \$60,000. Fifty cents will be applied toward the credit amount for every SEP dollar spent by USU.

A 30-day public comment period began on Tuesday, October 10, 2023 and will end on November 8, 2023. The SCO will be brought back to the Board for final action after the public comment period is completed.

Mark Franc asked if the solar panels that USU has agreed to install are in addition to ones USU would have installed anyway. Specifically, was USU planning on installing solar panels anyway and was interested in what is actually being gained. Ms. Moran stated that USU was not planning on installing them had it not been for the SEP. Ben Berrett, Associate Vice President for Finance & Administrative Service and Executive Director of Facilities for USU University, clarified that when the USU project was constructed, the infrastructure was designed for more solar panels. Special funding was received from the University President for this project, but it did not make economic sense to put the additional solar panels in at that time. So, while USU has the infrastructure plan, they have no funding source identified to move forward on the project because of the economic impacts.

Mr. Franc asked for clarification as it seems with the infrastructure already in place, the plan was to eventually install the solar panels, and now USU has credit going towards this NOV/CO to reduce the penalty.

Doug Hansen, Division Director, Waste Management and Radiation Control, clarified that there may have been a timing issue as well. Just because USU has infrastructure in place that would allow for the installation of solar panels at a future time, it may have never happened as funding for projects for government entities and agencies is difficult to obtain and stated that was the impetus for it to move forward.

Vern Rogers stated that the Board has had a number of stipulated consent orders presented to them over the past five or six years and it is interesting to see the difference or the division between the cash penalty required and the SEP allowance. Mr. Rogers commented that he does not recall seeing in this type of situation where there was such a small cash amount required and asked if that is simply set by negotiation or is there a statute or requirement that governs how that is divided and is it also dependent upon whether it is a public or private entity being assessed the penalty. Ms. Moran stated that she is not aware if the Division's penalty policy addresses Mr. Rogers' concerns and stated that she believes the amounts set are through negotiations.

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Director Hansen clarified that the penalty amount is part of the negotiation process, and there is not a mechanism in place for the Division not to assess a cash penalty associated with these matters.

Director Hansen stated that a number of factors come into play in the process of negotiating a penalty, which include if the violations resolved quickly and amicably, what kind of a project is being proposed, does the project exceed the amount of credit allowed, etc.

X. Director's Report.

Director Hansen reported that Board members up for reappointment had the opportunity to meet with the Natural Resources, Agriculture and Environment Interim Senate Committee on October 4, 2023, to answer questions regarding their pending reappointments. Director Hansen stated that meeting went very well and congratulated Nathan Rich, Vern Rogers, Shane Whitney, Danielle Endres, Dr. Codell, and Brett Mickelson, as all nominees received full Senate confirmation for their reappointments during the Utah State Senate meeting held on October 11, 2023. Director Hansen further commented that Chairman Senator Sandall of the Natural Resources, Agriculture and Environment Interim Committee spoke very highly and was very complimentary of all of the candidates and expressed his confidence in this Board and the actions each Board member takes in their capacity to lead the work being conducted in the two Divisions the Board supports.

Director Hansen also thanked all Board members for their willingness to serve and said that in addition to all the support received from UDEQ, our elected officials are grateful and supportive as well.

Director Hansen notified the Board that one SCO was presented today, but a few more are nearing completion that will require Board action. With that in mind, the Division staff will be conscientious of when they will be brought before the Board, as with past tradition, if a light agenda is forecasted for the December Board meeting, the tradition of not requiring a December Board meeting will be observed, if possible.

Kim Shelley, Executive Director of UDEQ, informed the Board that today she had the honor of attending a luncheon at the Governor's Mansion to celebrate this year's UDEQ recipient of the 2023 Governor's Award for Excellence, Alyssa Stringham. Executive Director Shelley highlighted Ms. Stringham's outstanding public service and her excellence as the lead GRAMA Records Officer/Archivist in the Division of Waste Management and Radiation Control. Executive Director Shelley stated that she thinks all 400+ UDEQ employees are exceptional, so it was very difficult evaluating the nominees, but Ms. Stringham was the selected finalist because for her outstanding public service. Ms. Stringham and her husband also attended the luncheon to celebrate her accomplishments and accepted the award as an exceptional employee on behalf of UDEQ.

XI. Other Business.

A. Miscellaneous Information Items – None.

B. Scheduling of next Board Meeting (November 9, 2023).

The next meeting is scheduled for November 9, 2023 at the Utah Department of Environmental Quality, Multi-Agency State Office Building.

Interested parties can join via the Internet: meet.google.com/gad-sxsd-uvs

Or by phone: (US) +1 978-593-3748 PIN: 902 672 356#

XII. Adjourn.

The meeting adjourned at 2:10 p.m.