

MEETING MINUTES APPROVED JANAUARY 11, 2024

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
November 9, 2023
1:30 p.m.

Board Members Participating at Anchor Location: Brett Mickelson (Chair), Dr. Richard Codell,
Nathan Rich, Vern Rogers, Shane Whitney

Board Members Participating Virtually: Dr. Steve McIff, Scott Wardle

Board Members Excused/Absent: Dennis Riding (Vice-Chair), Danielle Endres, Mark Franc, Jeremy Hawk,
Kim Shelley

UDEQ Staff Members Participating at Anchor Location:

Brent Everett, Doug Hansen, Morgan Atkinson, Tom Ball, Elizabeth Burns, Brenden Catt, Arlene Lovato,
Kari Lundeen, Judy Moran, Deborah Ng, Mike Pecorelli, Elisa Smith, Brian Speer

Others Attending at Anchor Location: 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 – None.

IV. Approval of the meeting minutes for the October 12, 2023 Board meeting (Board Action Meeting).

It was moved by Shane Whitney and seconded by Nathan Rich and UNANIMOUSLY CARRIED to approve the October 12, 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 October 2023, is \$32,747,054.00. 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. Administrative Rules.

A. Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to R315-124, R315-301, R315- 302, R315-304, R315-306, R315-309, R315-310, R315-311, and R315-314 of the Solid and Hazardous Waste Rules of the Utah Administrative Code (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager, and Brian Speer, Solid Waste Section Manager, in the Division of Waste Management and Radiation Control (Division), reviewed the approval from the Board to proceed with formal rulemaking and public comment on proposed changes to the Solid Waste Rules

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R315-124, R315-301, R315-302, R315- 304, R315-306, R315-309, R315-310, R315-311, and R315-314 of the Utah Administrative Code (UAC) to 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. This matter was presented to the Board as an informational item at the October 12, 2023 Board Meeting.

The solid waste rules have not been updated or amended for several years, so the purpose of this rulemaking is to bring the rules up-to-date and fix errors that exist in the rules. There are several statutory citations in the rules that are not correct because statutes have been amended and numbering has changed, so that numbering is being corrected. Also, several rule citations were found to be incorrect, so these are also being corrected.

Clarifying language is being added in several locations to assist the regulated community in implementing the rules. The Utah Legislature also passed bills in the past several years that made changes to the solid waste program. These changes are being codified in rule with these amendments.

Also, UAC 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. These requirements improve the public participation process for these types of permitting actions.

Additionally, the Division is fixing typographical and formatting errors found in the rules as requested by the Governor's Office.

This is a Board Action Item, and the Director of the Division recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the December 1, 2023, Utah State Bulletin the proposed changes to R315-124, R315- 301, R315-302, R315-304, R315-306, R315-309, R315-310, R315-311, and R315-314 of the Utah Admin. Code and conduct a public comment period from December 1, 2023 to January 3, 2024.

Nathan Rich commented as a Groundwater Engineer that he is pleased to see that after 30 years, the State recognizes groundwater as one word rather than two.

Mr. Rich had specific comments, questions, and concerns regarding clarity specific to UAC R315-310 that included the vague definition associated with the wording and meaning of "solid waste facilities." Mr. Speer stated that there was not any purposeful vagueness to the use of that term. Mr. Speer noted that the definition of a solid waste disposal facility does not include all facility types that require approval from the Director. Specifically, the language and definitions in UAC R315-310 should capture all facilities that require approval from the Director. Further discussion took place regarding the definition of solid waste facilities and what types of facilities require a permit.

Mr. Rich had specific comments, questions, and concerns with clarity specific to proposed language in UAC R315-310-1(b) regarding the terms and meaning of "other facilities" that do not require a permit. Mr. Speer stated that there is a possibility of adding some clarity and further discussed those facility types that require approval that are not listed in the rules.

Mr. Rich had questions relating to compost and transfer stations as these types of facilities do not require a permit, but the proposed rules imply new requirements. Mr. Speer stated that while making the proposed changes to the rules, it was discovered that the term "permit" is used in different ways in different parts of the rules. So, part of this change is to be more consistent throughout all the Solid Waste Rules. Further discussion took place regarding the definition of "permit" vs. "plan of operation" and possibly improving the clarity of the proposed rules. Mr. Rich commented that he feels that clarity is needed to differentiate between the type of permit, such as a Permit vs. a Plan of Operations.

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Mr. Rich had a question regarding a new section in the Rules (UAC R315-310-3) that discusses an application for a new facility owner/operator to check certain boxes. Further discussion regarding this matter took place. Also, Mr. Rich questioned if the Division is now applying this to composting facilities when he believed that the intent of that legislation was meant for landfills not all facilities. Mr. Speer stated that the Solid and Hazardous Waste Act does not differentiate between different types of facilities, generally speaking, when they are talking about facilities that will address disposal, treatment, storage. etc., and the language being referred to was taken directly out of the State statute, and this language only applies to local governmental facilities.

After all of Mr. Rich's concerns were discussed as noted above, it was determined that the best path forward would be for Mr. Rich to submit all his concerns on the proposed rule changes to UAC R315-310 to the Division during the public comment period. After the Division has had a chance to address all Mr. Rich's comments, this specific rule could come back to the Board as a change in the proposed rules or, if needed, go out for a second public comment period if the timeframe has lapsed. It was clarified that because the concerns only address UAC R315-310, the rest of the proposed rule changes that received no public comment would continue in the rulemaking process.

[It was noted that in the Executive Summary, the year the public comment period ended was incorrectly listed as January 3, 2023, instead of January 3, 2024; this has been corrected.]

It was moved by Nathan Rich and seconded by Dr. McIff and UNANIMOUSLY CARRIED to approve proceeding with formal rulemaking and public comment by publishing in the December 1, 2023, Utah State Bulletin the proposed rule changes to R315-124, R315- 301, R315-302, R315-304, R315-306, R315-309, R315-310, R315-311, and R315-314 of the Utah Admin. Code and conducting a 30-day public comment period from December 1, 2023 to January 3, 2024.

B. Approval of the Board to proceed with formal rulemaking and public comment on proposed changes to R313-19, R313-21, and R313-22 of the radiation control rules to make changes requested by the Nuclear Regulatory Commission (NRC) to ensure compatibility of Utah rules with the federal regulations (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager in the Division of Waste Management and Radiation Control (Division), reviewed the approval from the Board to proceed with formal rulemaking and public comment on proposed changes to Utah Admin. Code (UAC) R313-19, R313-21, and R313-22 of the Radiation Control Rules to make changes requested by the Nuclear Regulatory Commission (NRC) to ensure compatibility of Utah rules with the federal regulations.

The Nuclear Regulatory Commission provided comments to the Division after a review of the Division rules regarding inconsistencies between Utah rules and federal regulations. Some of the comments were fairly minor, as the word "mirror" was left out of one of the rules and the word "uranium" was left out of another rule. Also, the reference to 10 CFR 40.32(b) and (c) needed to be added to a rule and parts of 10 CFR that were incorporated by reference in UAC R313-21-2(c) are being updated as the NRC requested, as all the citations were not in the rules. Those citations requested have been added. References to 10 CFR 40.22 and 40.51 are being addressed in UAC R313-22-55(1)(c)(i) by adding the phrase "regulations of the NRC" to that rule. The final correction made was to correct UAC R313-22-55 (1)(d)(i) by adding the requirement to report to the Director of the Office of Nuclear Material Safety and Safeguards at the NRC in addition to reporting to the Director of the Division of Waste Management and Radiation Control.

These changes need to be made to the rules for Utah to maintain compatibility with the federal regulations. Additionally, the Division is fixing typographical and formatting errors found in the rules as requested by the Governor's Office.

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The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the December 1, 2023, Utah State Bulletin the proposed changes to UAC R313-19, R313-21, and R313-22 of the Utah Admin. Code and conducting a public comment period from December 1, 2023 to January 3, 2024. There were no comments or questions.

[It was noted that in the Executive Summary, the year the public comment period ended was incorrectly listed as January 3, 2023, instead of January 3, 2024; this has been corrected.]

It was moved by Vern Rogers and seconded by Dr. Codell and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking by publishing in the December 1, 2023, Utah State Bulletin the proposed rule changes to the Radiation Control Rules R313-19, R313-21, and R313-22 of the Utah Admin. Code and conducting a 30-day public comment period from December 1, 2023 to January 3, 2024.

VII. Hazardous Waste Section.

Introduction – Director Doug Hansen reported that at the last Board meeting, a Board member questioned if Stipulated and Consent Orders (SCOs) are published on the State of Utah notification website/Utah Public Notice Website. At that time, Director Hansen indicated that SCOS are published on that website. However, after verifying that information, Director Hansen was incorrect, as SCOs are only published on the Division’s webpage and, to his knowledge, no other division in the Department publishes their SCOs to the Utah Public Notice Website, either. Director Hansen stated that if the Board felt it was something they were interested in pursuing, that could be looked into. Director Hansen also informed the Board that the Division is moving a lot of its operations to a new database management system with Salesforce, and the new database will have the ability to assist in notifying the public who are interested in different topics; i.e., the public can request to be put on different mailing lists and then will be provided notifications electronically. So, as the public signs up for notifications of what their interests are, they will receive targeted notifications for the different actions happening in the Division, and this ability will be available for all the Division’s different programs. One of the goals of the new database management system is to create a better opportunity to provide targeted information to the right audience with their various interests.

A. Proposed Stipulation and Consent Order between the Director and Clean Harbors Environmental Services (Information Item).

Kari Lundeen, Environmental Scientist/Inspector, Hazardous Waste Section, Division of Waste Management and Radiation Control, reviewed a proposed Stipulation and Consent Order (SCO), to resolve a Notice of Violation and Compliance Order, issued to Clean Harbors Environmental Services (CHES) on March 28, 2022.

The NOV/CO was based on information documented during an inspection at the Clean Harbors Aragonite facility in June 2021 and a subsequent review of documents (from June 2021 through October 2021) related to the transport of hazardous waste. The violations noted in the NOV/CO have been resolved. The SCO includes a total proposed penalty of \$40,080.00. Clean Harbors Environmental Services will pay a monetary penalty of \$20,040.00, while \$20,040.00 will be held in abeyance if CHES completes requirements set forth in Paragraph 12 of the SCO that was included in the November 9, 2023 Board’s packet.

This is an informational item only. A 30-day public comment period is currently underway and will end on December 1, 2023. Following the comment period, this matter will be brought before the Board for final action at the January 11, 2024 Board meeting. There were no comments or questions.

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B. Proposed Stipulation and Consent Order between the Director and Clean Harbors Aragonite, LLC (Information Item).

Deborah Ng, Hazardous Waste Section Manager, Division of Waste Management and Radiation Control, reviewed a proposed Stipulation and Consent Order (SCO), to resolve a Notice of Violation and Compliance Order, issued to Clean Harbors Aragonite, LLC (CHA) on June 24, 2022.

The violations noted in the NOV/CO have been resolved. The SCO includes a proposed penalty of \$90,030.50, of which \$75,030.50 will be a cash payment and of which \$15,000 will be deferred and may be vacated if CHA is able to meet the criteria laid out in the proposed SCO.

Copies of the NOV/CO, the SCO, and the penalty narrative are included in this Board packet. §19-6-104 of the Utah Solid and Hazardous Waste Act authorizes the Board to issue orders and approve or disapprove settlements negotiated by the Director with a civil penalty over \$25,000.

This is an informational item only. A 30-day public comment period began on November 2, 2023, and will end December 1, 2023. Following the comment period, this matter will be brought before the Board for final action at the January 11, 2024 Board meeting. There were no comments or questions.

C. Approval of Proposed Stipulation and Consent Order between the Director and Utah State University (Board Action Item).

Judy Moran, Environmental Scientist/Inspector, Hazardous Waste Section, Division of Waste Management and Radiation Control, reviewed the Board's approval of a proposed Stipulation and Consent Order between the Director and Utah State University (USU) to resolve a Notice of Violation and Compliance Order (NOV/CO), issued to Utah State University on April 8, 2022. This is a Board action item.

The 13 violations identified in the NOV/CO have been resolved. The SCO includes a total penalty of \$28,409.00. Utah State University will pay 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 has proposed to add 80 solar panels to an existing solar array on the Gateway Parking Terrace's 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 ended on November 8, 2023. No comments were received. The Director of the Division of Waste Management and Radiation Control recommends the Board approve this SCO. There were no comments or questions.

It was moved by Shane Whitney and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the Proposed Stipulation and Consent Order between the Director and Utah State University.

VIII. Director's Report.

Director Hansen reported that some organizational structure changes will be occurring within the Division and presented those changes to the Board. These changes are anticipated to be implemented at the beginning of the new year. The major changes include the addition of two new sections (Used Oil and Uranium Mill). Currently, the sections that encompass these programs are fairly large as both contain two programs within each section, so each of the two sections will be split, and the new work sections will be established. It is anticipated that this change will create some efficiencies as currently the sheer workload and all the staff in these larger sections reporting through one manager tend to bog things down. Also, indicators predict that there will be some growth within these programs and other Division programs as the economic increase within the State is not going to change. Director Hansen explained the anticipated growth of the Division programs and commented that this change sets the stage for the Division to adapt and continue to grow

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accordingly by creating efficiencies in the work being conducted, as well as create opportunities so that when growth occurs it can be realistically and effectively be managed.

Vern Rogers asked how the new section managers will be appointed. Director Hansen stated the Division anticipates hiring two new managers for these sections in the near future.

Also, Director Hansen informed the Board that the Division has requested a building block to supplement the staffing of the Low Level Waste Section. The Division is currently looking into some internal structural changes within that section that are anticipated to create some efficiencies in the management scheme for that section. Unfortunately, the Division cannot divide this section up so instead is looking into some creative internal solutions to help manage some of the workload within this section.

Director Hansen reported that with the upcoming legislative session, a few conversations have been held including receiving some feedback on the Division's fee schedules that may draw some legislative attention during the upcoming session. Director Hansen stated that he is also aware of one bill that deals with produced water in the Basin (energy and exploration process water) but does not anticipate it to impact the Division, but the Division will continue to monitor this bill. Director Hansen stated that if Board members are aware of potential legislation that could impact the Division, he would appreciate being informed.

Vern Rogers commented that several months ago, the Board approved an annual treatment variance that *EnergySolutions* brings before the Board for its cemented waste uranium waste that is generated by the Department of Energy. At that time, Dr. Codell asked some questions about the material, including its chemical nature. Although it has taken *EnergySolutions* a while to deal with the release of that information, they have received it and have provided it to the Division and want to make sure Dr. Codell has received the information.

Arlene Lovato, Administrative Secretary for the Division, informed the Board that the Division did receive the information, and Tyler Hegburg, lead Division staff member on this matter, is in the process of providing a short summary to be included in the information provided by *EnergySolutions* and then it will be sent to Dr. Codell.

IX. Other Business.

A. Miscellaneous Information Items - None.

B. Scheduling of next Board Meeting (January 11, 2024).

The next meeting is scheduled for January 11, 2024 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#

X. Adjourn.

The meeting adjourned at 2:20 p.m.