

MEETING MINUTES APPROVED APRIL 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
February 8, 2024
1:30 p.m.

Board Members Participating at Anchor Location: Brett Mickelson (Chair), Mark Franc, Jeremy Hawk, Shane Whitney

Board Members Participating Virtually: Dr. Richard Codell, Danielle Endres, Dr. Steve McIff, Nathan Rich, Dennis Riding (Vice-Chair)

Board Members Excused/Absent: Vern Rogers, Kim Shelley, Scott Wardle

UDEQ Staff Members Participating at Anchor Location: Brent Everett, Doug Hansen, Morgan Atkinson, Tom Ball, Elizabeth Burns, Leo Calcagno, Brenden Catt, Jalynn Knudsen, Arlene Lovato, Deborah Ng, Bret Randall, Mike Pecorelli, Elisa Smith, Brian Speer, Bryan Woolf

Others Attending at Anchor Location: None

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 January 11, 2024, Board meeting (Board Action Item).

It was moved by Nathan Rich and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the January 11, 2024, 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) Enterprise Fund for the end of January 2024, is \$33,500,103.00. The DERR continues to watch the balance of the PST Enterprise Fund closely to ensure sufficient cash is available to cover qualified claims for releases. There were no comments or questions.

Dennis Riding asked what the upper limit of the PST Enterprise Fund is. Mr. Everett reported that there is a 50-million-dollar cap on the PST Enterprise Fund. If the PST Enterprise Fund reaches 50-million-dollars, the surcharge reverts back to a quarter cent. With the addition of aboveground petroleum storage tanks to the PST Enterprise Fund, it is possible these releases could cause fluctuations within the PST Enterprise Fund.

Mr. Everett informed the Board of a couple of bills that the department is tracking due to the potential impact of these bills on the department.

House Bill 373 Environmental Quality Amendments creates a legislative review commission that would be required to review all agency actions by the Utah Department of Environmental Quality (UDEQ). The bill requires a 45-day advance notice of agency actions to be reviewed by the commission before final approval can be made. This would include actions taken by the PST Program, such as certification of contractors,

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one-time drops for setting tanks, certificates of compliance, etc. This bill is to go before the Natural Resources, Environmental and Agriculture Committee tomorrow.

The second bill the UDEQ is tracking is House Bill (HB) 230 State Agency Application Review Requirements. HB 230 is currently in the House Government Operations Committee. This HB 230 imposes a 180-day limit on 3 agencies: the UDEQ, the Department of Natural Resources, and the Department of Commerce for review of action on permits. The definition of permits is quite broad and covers most agency actions. If applications are not approved within the 180-day timeframe, the application is automatically approved. This would impact all permitting actions within the agency. Sometimes these actions can take years due to their complexity. The change could have some impact on the PST Program.

Mr. Everett also mentioned that last month he informed the board of a DERR budget request to transfer \$4,000,000.00 from the PST Enterprise Fund to the PST Cleanup Fund to address legacy sites where the responsible party is unknown, unwilling, or unable to pay. It was discovered that the statutory language allowing this transfer had been removed. The DERR will work with the Legislative Fiscal Analyst to find the appropriate language to try to do this transfer during the next session.

Mr. Riding asked to have the bill numbers repeated.

VI. Administrative Rules.

A. **Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to the Utah Solid and Hazardous Waste Rules R315-320 of the Utah Administrative Code (Board Action Item).**

Tom Ball, X-Ray and Technical Support Manger in the Division of Waste Management and Radiation Control, reviewed the request for approval from the Board to proceed with formal rulemaking and public comment on proposed rule changes to Utah Solid and Hazardous Waste Rules R315-320 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.

Mr. Ball reminded the Board this proposed rule was presented to the Board during their January Board meeting as an information item.

Mr. Ball informed the Board that the solid waste rules have not been updated or amended for several years and this rulemaking is to bring the rules up-to-date and fix errors in the rules.

Mr. Ball reviewed the following changes occurring with this rulemaking: Language is being added to UAC R315-320-1(1) to make it clear that waste tire transporters and recyclers are defined in statute; Language is being added to UAC R315-320-1(3) to make it clear that the Director or an authorized representative may enter and inspect a site to verify compliance with UAC R315-320; Six definitions have been added to UAC R315-320-2; Language is being added to UAC R315-320-3 that changes the number of tires and the size of tires that an individual can bring to a landfill at one time as required by House Bill 27 that was passed during the 2020 session of the Utah Legislature; Language is being added that clarifies other requirements for the landfill management of waste tires and material derived from waste tires; The citation to Utah Code 19-6-804(4) found in UAC R315-320-3(5) is being corrected to Utah Code 19-6-804(5); UAC R315-320-6(2) is being added to provide clear language in the rules regarding what is required by statute; Language is being added and removed from UAC R315-320-7 to make it clear what is required by statute and as required by House Bill 236 that was passed during the 2021 session of the Utah Legislature, as these rules govern the reimbursement for removal of a tire pile at a landfill or transfer station owned by a government entity or an abandoned tire pile and address the information that must be submitted to the Director to determine reasonability of a bid.

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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 of Waste Management and Radiation Control recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the March 1, 2024, Utah State Bulletin the proposed changes to UAC R315-320 and conducting a 30-day public comment period from March 1, 2024 to April 1, 2024.

Danielle Endres stated during her review of the new definitions that she noticed a new definition was added for beneficial use and a variety of different ways to describe what beneficial use would be for regarding used tires and questioned where the new definitions came from. Specifically, what was the basis for coming up with the new definitions, and did the new definitions come from existing statutes?

Brian Speer, Solid Waste Section Manager in the Division of Waste Management and Radiation Control, informed the Boards that all the new definitions added to the rule came directly from statute and are being incorporated into the rule to help the reader understand.

There were no additional comments or questions.

It was moved by Mark Franc and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking by publishing in the March 1, 2024, Utah State Bulletin and conducting a 30-day public comment period from March 1, 2024 to April 1, 2024, the proposed changes to UAC R315-320.

VII. X-Ray Program.

A. **Approval of a Mammography Imaging Medical Physicist (MIMP) in accordance with UAC 19-3-103.1 (2)(c) of the Utah Code Annotated (Board Action Item).**

Tom Ball, X-Ray and Technical Support Manger in the Division of Waste Management and Radiation Control, reviewed the request for the Board to approve an application to be certified as a new Mammography Imaging Medical Physicists. Individuals referred to as Mammography Imaging Medical Physicists (MIMPs) must submit an application for review of qualifications to be certified by the Board as required by Utah Code §19-3-103.1. These physicists perform radiation surveys and evaluate the quality control programs of the facilities in Utah providing mammography examinations.

The Division has received a new application from Daniel Silvain, MS, DABR to be certified as a MIMP. Division staff have reviewed the applicant's qualifications and the applicant has met the requirements detailed in R313-28-140 of the Utah Administrative Code.

This is a Board action item. The Director of the Division of Waste Management and Radiation Control recommends the Board issue a certificate of approval for Daniel Silvain.

There were no additional comments or questions.

It was moved by Dennis Riding and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve Daniel Silvain to be certified as a Mammography Imaging Physicist (MIMP) in accordance with UCA 19-3-103.1 (2) (c) of the Utah Code Annotated.

VIII. Hazardous Waste Section.

A. **Approval of Proposed Stipulation and Consent Order between the Director and Tri State Oil Reclaimers, Inc. (UOP-0195) (Board Action Item).**

Leo Calcagno, Environmental Scientist, Used Oil Section, in the Division of Waste Management and Radiation Control, reviewed the Proposed Stipulation and Consent Order (SCO) No. 2111118 between the

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Director and Tri State Oil Reclaimers, Inc. (TSOR) to resolve Notice of Violation and Compliance Order (NOV/CO) No. 2111115 issued to TSOR on May 20, 2022.

The NOV/CO was based on findings documented by Division of Waste Management and Radiation Control inspectors regarding used oil storage and processing operations conducted at TSOR's used oil processor facility located in West Haven, Utah.

The SCO includes a total penalty of \$48,626.00. TSOR will make a cash payment of \$24,313.00 within 30 days of the effective date of the SCO. The remaining penalty amount of \$24,313.00 will be deferred and waived by the Director if TSOR complies with the requirements set forth in the SCO for one year from the effective date of the SCO.

The Proposed SCO was presented to the Board as an information item during the January 11, 2024, Board meeting. The 30-day public comment period began on January 8, 2024, and ended on February 7, 2024. No comments were received. The Director recommends approval of the Proposed SCO.

Mark Franc had questions related to the reduction of the penalty. Mr. Franc reminded the Board of the discussions held at the last meeting regarding this matter that included the fact that the reduction of the penalty is intended to be an encouragement for the facility to continue in compliance and if the facility does not continue in compliance the deferred second half of that penalty will be imposed and asked if there are any other options.

Also, Mr. Franc complimented the staff on the thorough investigation and the completeness of the information provided regarding this matter, but he stated his concerns are in regards to the willfulness of non-compliance, enhancement of non-compliance for good-faith or lack of good-faith, economic benefit, and commented that upstanding members of the regulated community would not expect to receive violations with lack of good faith enhancements or willfulness enhancements as it is clear that this facility was operating outside of its regulatory requirements with no apparent attempt to correct the violations when noted. So aside from cutting the penalty in half, and then assessing the other half of the penalty if they continue operating in non-compliance, what else can be done to encourage them to remain in compliance?

Mr. Calcagno stated that the resolution is for the facility to submit documentation quarterly to prove they are on-track and in compliance for a year as well as the Division will closely monitor the facility to ensure they remain in compliance. These items should assist the facility to remain in compliance. Also, an inspection of the facility will occur within the year. Mr. Calcagno discussed the results of a recent inspection he conducted. Mr. Calcagno also stated that the Division is hopeful the facility will remain in compliance and that reduction in the penalty is incentive enough so the other half of the penalty will not have to be collected.

Doug Hansen, Director of the Division of Waste Management and Radiation Control (Director), reminded the Board that in addition to the penalty that has been deferred which can be collected immediately if the facility goes back into non-compliance if the required changes/progress is not occurring, the Division has the ability to fine the facility with new violations. At that point, since the Division has been lenient, the Director would be less inclined to negotiate a settlement of this nature in the future. Specifically, if the facility continues toward and returns to non-compliance, each violation constitutes new violations and penalties associated with them would not receive the same sorts of deference that the Division has shown in negotiating this settlement agreement.

Mr. Franc asked at what point does the Division revoke the permit. Mr. Calcagno stated that decision is made by the Director, and it would be based on non-compliance of the facility. Director Hansen reiterated that the Division's goal is to help facilities get back into compliance and stay in compliance. Director Hansen stated that in this particular case, because there are limited number of companies in this industry, the State would be impacted if this company was completely out of business. However, compliance is expected, and so, if violations continue or reoccur, they will be addressed.

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Bret Randall, Assistant Attorney General representing the Division of Waste Management and Radiation Control, commented and discussed a few other relevant remedies in response to the questions, including the Stipulated Compliance Order actions and other options, such as taking the matter to the District Court.

Mr. Franc stated that, in summary, he appreciates UDEQ's willingness to work through the regulations as the regulations can be very complicated and it is common for the regulated community to miss something. As facilities violate the regulation and then recognize the mistake or violation and inform the UDEQ, they will correct the violation immediately, and when that scenario occurs, the UDEQ's lenience and willingness to educate and willingness to teach the regulated community so a facility can come back in compliance is very useful. He expressed his gratitude on behalf of the regulated community for UDEQ's willingness to do that.

It was moved by Shane Whitney and seconded by Dr. Codell and CARRIED to approve the Proposed Stipulation and Consent Order No. 2111118 between the Director and Tri State Oil Reclaimers, Inc. UOP-0195. One Nay vote recorded by Mark Franc.

After the motion, Mr. Franc stated he felt it was again necessary to comment that he felt the UDEQ did do a great job in negotiating this settlement as the information provided was very detailed and very well sought out, etc. However, in this situation, he feels that on several occasions, the offending party has not made the necessary efforts to correct their actions and therefore may not qualify for the lenience they received.

B. Approval of Proposed Stipulation and Consent Order between the Director and Tri State Oil Reclaimers, Inc. (UOP-0135/UOR-0137) (Board Action Item).

Leo Calcagno, Environmental Scientist, Used Oil Section, in the Division of Waste Management and Radiation Control reviewed the Proposed Stipulation and Consent Order (SCO) No. 2111116 between the Director and Tri State Oil Reclaimers, Inc. (TSOR) to resolve Notice of Violation and Compliance Order (NOV/CO) No. 2111113 issued to TSOR on September 7, 2022.

The NOV/CO was based on findings documented by Division of Waste Management and Radiation Control inspectors regarding used oil transportation and marketing of on-specification used oil operations conducted by TSOR.

The SCO includes a total penalty of \$111,601.00. TSOR will make a cash payment of \$55,800.50 within 30 days of the effective date of the SCO. The remaining penalty amount of \$55,800.50 will be deferred and waived by the Director if TSOR complies with the requirements set forth in the SCO for one year from the effective date of the SCO.

The Proposed SCO was presented to the Board as an information item during the January 11, 2024, Board meeting. The 30-day public comment period began on January 8, 2024, and ended on February 7, 2024. No comments were received. The Division Director recommends approval of the Proposed SCO.

No questions or comments were received.

It was moved by Jeremy Hawk and seconded by Steve McIff and CARRIED to approve the Proposed Stipulation and Consent Order No. 2111116 between the Director and Tri State Oil Reclaimers, Inc. UOP-0135/UOR-0137. One Nay vote recorded by Mark Franc.

C. Approval of Proposed Stipulation and Consent Order between the Director and Tri State Oil Reclaimers, Inc. (UOP-0172) (Board Action Item).

Leo Calcagno, Environmental Scientist, Used Oil Section, in the Division of Waste Management and Radiation Control, reviewed the Proposed Stipulation and Consent Order (SCO) 2111117 between the Director and Tri State Oil Reclaimers, Inc. (TSOR) to resolve Notice of Violation and Compliance Order (NOV/CO) No. 2111114 issued to TSOR on May 20, 2022.

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The NOV/CO was based on findings documented by the Division of Waste Management and Radiation Control inspectors regarding used oil storage and processing operations conducted at TSOR's used oil processor facility in Genola, Utah.

The SCO includes a total penalty of \$44,245.00. TSOR will make a cash payment of \$22,122.50 within 30 days of the effective date of the SCO. The remaining penalty amount of \$22,122.50 will be deferred and waived by the Director if TSOR complies with the requirements set forth in the SCO for one year from the effective date of the SCO.

The Proposed SCO was presented to the Board as an information item during the January 11, 2024, Board meeting. The 30-day public comment period began on January 8, 2024, and ended on February 7, 2024. No comments were received. The Division Director recommends approval of the Proposed SCO.

Dennis Riding questioned if this facility understands the magnitude of the threat; essentially, that they could lose their permit. Mr. Riding stated that he understands that the facility has not been very responsive, but he asked if it has been clearly communicated to the facility what they are facing.

Mr. Calcagno stated he hopes so, as the Division has been in communication with the facility, and the facility does have legal counsel involved in this matter. Mr. Calcagno further stated that the facility accepted this agreement and is aware that their permit can be revoked, and they are aware that they are required to comply moving forward to receive the UDEQ's penalty waiver and to avoid any more serious actions brought against them. Mr. Calcagno informed the Board that in his conversations with the facility's management discussing the need for compliance with the regulations, he thinks they understand, and hopefully they utilize that understanding to keep them in compliance to avoid more severe actions.

Danielle Endres stated that Mr. Calcagno stated previously that this was the agreement that the facility was willing to accept and as it applies to all three of SCOs, and asked if the approach is generally to try to find something this agreeable to the violating company or is it within UDEQ's authority to fine facilities without negotiating with the facility on what they would be willing to accept.

Director Hansen explained that the UDEQ does not have the authority to levy a fine and expect a facility to pay that fine; for that process to happen, the UDEQ would have to go to the District Court and explained the process of turning a matter over to the District Court.

Director Hansen explained that when the Division brings these types of matters to the Board, the Division has already negotiated a settlement agreement with the facility and gives them an opportunity to be in compliance that exacts a penalty and payment amount while avoiding the cost and process involved with litigating in the District Court. Director Hansen also discussed the lengthy timeframes involved with UDEQ settling these types of matters versus the District Court's timeframes, which are significantly longer.

Director Hansen recommended that at a future Board meeting, a presentation regarding the Division's enforcement process be conducted that will include information regarding settlement negotiations and remedies, as this may provide the Board with a clearer understanding of what UDEQ's options are and are not in enforcing penalties and bringing facilities back into compliance, as the end goal is always compliance.

Ms. Endres stated she would welcome that type of presentation as it would assist the Board in making the best decisions on these types of matters brought before them.

It was moved by Dennis Riding and seconded by Jeremy Hawk and CARRIED to approve the Proposed Stipulation and Consent Order No. 211117 between the Director and Tri State Oil Reclaimers, Inc. (TSOR) UOP-0172. One Nay vote recorded by Mark Franc.

IX. Director's Report.

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Director Hansen reminded the Board that he previously informed them of the restructuring of the sections within the Division that included the hiring of two new section managers. Director Hansen announced that Adam Wingate has been selected as the new Uranium Mill Section Manager. Director Hansen stated that the Board may recognize Mr. Wingate's name as he previously served as an Engineer in the Hazardous Waste Section in the Division. Director Hansen welcomed Mr. Wingate into his new position.

Director Hansen informed those members who receive meeting compensation (per diem) that effective February 2024, the following statutory rate change occurred: \$135 per diem allotted for each official meeting attended that lasts up to four hours and \$200 per diem allotted for each official meeting attended that is longer than four hours. Also, the mileage rate has changed to a flat rate of 0.44 cents per mile.

Director Hansen provided additional comments on two legislative bills previously presented by Director Everett and informed the Board of other bills the Division is tracking that may impact the Division.

Director Hansen provided the following additional comments on House Bill 230, State Agency Application Review Requirements (this bill imposes a 180-day limit on UDEQ for review of action on permits). Director Hansen stated that it is important to remember that the vast majority of permits the Division issues are done within a reasonable timeframe of completion, and the permits that do take additional time usually involve other issues associated with them, and he discussed those scenarios. Director Hansen further stated that he feels it is a disservice to the applicant if the Division does not do a complete and thorough review of a permit as this may leave the permit approval open to the possibility of an appeal. Therefore, the Division is concerned about adhering to a specified timeline, which will not give the staff the opportunity to do the work required to ensure a permit issued can stand up against an appeal.

Director Hansen provided the following additional comments on House Bill 373, Environmental Quality Amendments (this bill creates a legislative review commission that would be required to review all agency actions by the UDEQ and requires a 45-day advance notice of agency actions to be reviewed by the commission before final approval can be made). Director Hansen informed the Board that as the bill is written, almost any of the Division's agency actions would be subject to advising by this new commission. Director Hansen explained how this bill would negatively impact the Division and explained how x-ray registration could be impacted, as a 45-day advance notification from this commission to review these registrations would have to occur instead of the minimal time it currently takes to issue these types of registrations. Director Hansen commented that this type of delay could cause customer service issues.

Director Hansen reported on House Bill 107, Recycling Facility Transparency Amendments, sponsored by Representative Welton. Director Hansen reminded the Board that coordination efforts took place on this bill with Nathan Rich. This bill requires that facilities that recycle and are paid for out of a collection through a municipality are to provide a report to their constituents twice a year to inform them of their recycling efforts. Since the Division already collects data, Director Hansen worked with the sponsor of the bill to, rather than having municipalities report this information directly to their constituents, instead require them to send the information collected to the Division of Waste Management and Radiation Control. This bill is anticipated to pass.

Director Hansen reported on Radioactive Waste Amendments; this bill addresses taxation related to radioactive waste facilities. Director Hansen stated this bill does not impact the Division.

Director Hansen reported on House Bill 335, State Grant Process Amendments, sponsored by Representative Peterson. This bill enacts provisions governing the administration of state grants. Director Hansen reported that this bill impacts the Used Oil Program in the Division. Director Hansen informed the Board that the Used Oil Program typically gives grants to local health departments to administer collection services, special events, education, and outreach activities, and this bill in its original language would have prevented the Division from issuing grants to another governmental entity by only allowing grants to be administered to nonprofits. However, a substitute bill has been drafted, and the

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language now allows for the Used Oil Program to continue issuing grants to local health departments that assist in the endeavors of oil collected for the Used Oil Program.

Director Hansen reported on House Bill 470, Federal Agency Regulatory Review Amendments, sponsored by Representative Snider. This bill is also known as the Chevron deference. This bill addresses state agency review of federal regulations. "Chevron deference" means deference given to a federal agency's interpretation of a federal statute by a court because the court determined that, based on certain conditions, they are the subject matter experts. Director Hansen reported that before January 1st of next year, State agencies will have to do a thorough review of their regulations to see which regulations would have received deference under the Chevron deference and report all federal regulations impacted by Chevron deference to the Office of the Attorney General. Director Hansen stated that at this time it is unclear of the impacts of this bill.

Danielle Endres asked if the Division is following Senate Bill 57, Utah Constitutional Sovereignty Act, sponsored by Senator Sandall and asked if this would impact the Nuclear Regulatory Commission regulations that the State of Utah is required to follow. Director Hansen reported that the Governor has already signed this bill. Director Hansen commented that he feels the Division is okay with this bill as it essentially gives the legislature the opportunity and ability to push back when they feel there is Federal overreach. Director Hansen commented that as administrator of delegated programs from the U.S. EPA and NRC, the Division is concerned and hopes that before the Legislature does any push back conversations regarding the consequences would be held. He discussed current communications efforts occurring with an elected representative addressing the differences in the way the State administers programs compared to the federal government.

Mark Franc commented that House Bill 230, State Agency Application Review Requirements, in its original language, provided for only 30 days' timeline, which clearly would have a negative impact to the regulated community. However, with the language changed to 180 days' timeline, he asked if the Division still felt it was unacceptable. Director Hansen stated that for 95 percent of the permits the Division administers, the 180 days' timeline should not be an issue. However, for a handful of other complex permits that require more back and forth discussion and additional information, the 180 days' timeline may be an issue as they may exceed it. Director Hansen informed the Board that in the most recent substitute of the bill, there is a provision that if a statute exists with a different timeframe prescribed, the other statute overrides this bill. Therefore, if this bill passes as is, there is a remedy that the Division can identify in which of those licenses and permits might be problematic in meeting the 180 days' timeline, and the Division could then identify the different timelines within its statutes to address them. Director Hansen discussed the NRC timelines and the processes to evaluate licenses which take a considerable amount of time to complete. Mr. Franc commented that in his experience, he has not seen unreasonable delays in the permitting process and/or working with UDEQ. Mr. Franc also commented that House Bill 373 could potentially conflict with House Bill 230 as it could add an additional 45 days to the process. Director Hansen stated that he is aware of this issue as well.

X. Other Business.

A. Miscellaneous Information Items – None.

B. Scheduling of next Board meeting.

The March 14, 2024, Board meeting was canceled. The next meeting is scheduled for April 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#

XI. Adjourn.

The meeting adjourned at 2:25 p.m.