

# MEETING MINUTES APPROVED ON MAY 9, 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  
April 11, 2024  
1:30 p.m.

**Board Members Participating at Anchor Location:** Brett Mickelson (Chair), Mark Franc, Jeremy Hawk, Vern Rogers

**Board Members Participating Virtually:** Dr. Richard Codell, Dr. Steve McIff, Nathan Rich, Dennis Riding (Vice-Chair), Kim Shelley, Shane Whitney

**Board Members Excused/Absent:** Danielle Endres and Scott Wardle

**UDEQ Staff Members Participating at Anchor Location:** Brent Everett, Doug Hansen, Morgan Atkinson, Tom Ball, Brenden Catt, Avery Holyoak, Allie King, Jalyann Knudsen, Arlene Lovato, Deborah Ng, Stevie Norcross, Jordan Payne, Bret Randall, Elisa Smith, Brian Speer, David Wilson, Raymond Wixom

**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 February 8, 2024 Board meeting (Board Action Item).**

Marc Franc requested Paragraph 6 of Section VIII be corrected to read as follows:

... 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.

**It was moved by Marc Franc and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the February 8, 2024, Board meeting minutes with the corrected language stated above to Paragraph 6 of Section VIII.**

## **V. Annual Open Meetings, Conflicts, Ethics and Records Training (Information Item). (Training provided by Raymond Wixom, Assistant Attorney General, Office of Utah Attorney General)**

The Open Meetings, Conflicts, Ethics and Records Training was presented by Raymond Wixom, Assistant Attorney General, Utah Attorney General's Office. (A hard copy of the Annual Open Meetings, Conflicts,

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Ethics and Records Training presentation material was included with the official copy of the April 11, 2024 meeting minutes).

Dr. Codell asked for clarification concerning discussions among Board members over technical issues as they review the materials associated with an agenda item. Specifically, if a Board member is unclear about an agenda item that may require him to talk it over with another Board member who has more expertise (subject-matter expert) in that particular area and could clarify, can they be contacted or do those discussions between two or three Board members need to take place in a public forum.

Dr. Codell stated he does not want to do anything unacceptable, but the above may occur, as there may be a situation when Board members are asked to review technical issues associated with an agenda item.

Mr. Wixom stated that Board members should not get together to predetermine a decision on any matter. However, if a Board member asks another Board member a specific question on a specific matter to receive clarity on a technical issue, etc. that they are knowledgeable about (subject-matter expert), that is acceptable. Mr. Wixom further discussed other situations where this practice is not acceptable and advised all Board members to be cautious and careful in these situations.

There were no additional comments or questions.

## VI. 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 February 2024, is \$33,858,578.00. The cash balance at the end of March 2024 was \$33,732,739.00. 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.

Mr. Everett updated the Board on House Bill (HB) 373 Environmental Quality Amendments and HB 230 State Agency Application Review Requirements.

- HB 373 requires meetings between the Federalism Commission and the Utah Department of Environmental Quality.
- HB 230 was not passed out of committee. There may be additional questions during the interim.

Mr. Everett also mentioned that HB 89 Tax Refund Amendments, run by Representative Steve Eliason, limits the total amount of interest that may accrue each year on a tax overpayment or over collection. This applies to facilities claiming a refund on a portion of the Environmental Assurance Fee assessed to facilities that do not participate in the Environmental Assurance Program, but who paid the surcharge.

## VII. Petroleum Storage Tanks Rules.

A. Proposed changes to R311 of the Petroleum Storage Tanks Rules (Information Item).

Avery Holyoak, Leaking Underground Storage Tank Remedial Assistance Section Manager, informed the Board that the DERR is proposing changes to R311, the PST Rules. The rules to be amended are:

- R311-201. Petroleum Storage Tanks: Certification Programs and UST Operator Training.
- R311-203. Petroleum Storage Tanks: Technical Standards.
- R311-204. Petroleum Storage Tanks: Closure and Remediation.
- R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.

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This matter does not require Board action at this time. Upon completion of informal stakeholder comment, the Division intends to return to the Board to initiate the formal rulemaking process.

Dennis Riding asked about the DERR's existing red-tag authority. Ms. Holyoak explained that the DERR does have an existing red tag authority but it does not include red-tagging a tank for a failed line tightness test or a visually evident leak. The DERR is asking for authority to red-tag tanks that have failed a tightness test or have an appearance of a leak.

Mr. Riding asked if the DERR is expanding beyond the Legislative intent with the addition of leak detection provisions on all PSTs and not just those participating in the Environmental Assurance Program since one goal of the legislation in Senate Bill (SB) 40 is to ensure aboveground petroleum storage tanks (APSTs) have financial responsibility for their tanks.

Ms. Holyoak explained that SB 40's main goal was to ensure APSTs obtain a certificate of compliance (COC). One of the requirements to obtain a COC is tank tightness testing. SB 40 allowed for one-time tank tightness testing to obtain the original COC. In order to continue issuing a COC for these APSTs, the DERR is requesting the authority to require ongoing tank tightness tests in order to ensure continued tank tightness.

Mr. Everett explained that SB 40 originated through a State audit. The audit questioned why APSTs were not held to the same regulatory standards as underground petroleum storage tanks. As the DERR is implementing the new regulations, the DERR is striving to update rules to reflect different regulations based on the type of PST.

Ms. Holyoak also explained that double walled spill buckets were originally required as part of SB40. The DERR realizes that not all APSTs need to have double walled spill buckets because not all fill ports are below ground. The DERR is proposing to remove this requirement.

There were no other questions or comments.

### VIII. Administrative Rules.

- A. Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to Utah Solid and Hazardous Waste Rules R315-309 and R315-310 of the Utah Administrative Code 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 State Legislature **(Board Action Item)**.

Tom Ball, X-Ray and Technical Support Manger in the Division of Waste Management and Radiation Control (Division), reviewed the request for approval from the Board to proceed with formal rulemaking and public comment on proposed changes to Utah Administrative Code (UAC) R315-309 and UAC R315-310 of the Solid Waste Rules 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 State Legislature.

Mr. Ball stated that Division staff have been going through the solid waste rules updating and amending the rules and have presented them to the Board during the last few Board meetings. These rules have not been updated or amended for several years. This is an ongoing process and Mr. Ball reminded the Board that these two rules UAC R315-309 and UAC R315-310 were brought to the Board with proposed changes in November of 2023, but were not approved due to comments received. All comments have been reviewed and changes have been made based on the comments and UAC R315-309 and UAC R315-310 are now ready for approval from the Board to proceed with formal rulemaking and public comment.

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Mr. Ball stated that the purpose of this rulemaking is to bring the rules up-to-date and fix errors in the rules and reviewed the proposed changes to UAC R315-309 and UAC R315-310 that included the following: UAC R315-309(1) is being amended to clarify which facilities are required to have financial assurance; A rule reference in UAC R315-309-9(6)(a)(ii) to UAC R315-309-3(6)(b) and (c) is being corrected to UAC R315-309-9(6)(b) and (c); UAC R315-310-1 is being amended to clarify which types of solid waste facilities are subject to the permit requirements; The requirement for submitting two copies of a permit application for review found in UAC R315-310-2(2) is being deleted because the Division has an online electronic permit application process; UAC R315-310-3(1)(b) is being amended to clarify which facilities are exempt from having plans and drawings signed and sealed by a professional engineer; New requirements are being added in UAC R315-310-3(1)(l) in accordance with House Bill 357 passed by the Utah State Legislature in 2013; Language is being added in UAC R315-310-3(3)(a) to clarify that permit applicants must meet the requirements of 19-6-108(11) of the Utah Code; The word “commercial” is being added in UAC R315-310-3(c) to clarify that the rule applies to commercial solid waste disposal facilities; A new requirement is being added as UAC R315-310-3(e) as required by Senate Bill 68 passed by the Utah State Legislature in 2011; The rule language added under UAC R315-310-10(1) does not add any new requirements (language added to assist permit applicants by directing them to requirements found in other parts of the rules that they must include in their permit applications); and, the Division is fixing typographical and formatting errors found in the rules as requested by the Governor’s Office.

The Director of the Division recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the May 1, 2024, Utah State Bulletin the proposed changes to UAC R315-309 and UAC R315-310 and conducting a public comment period from May 1, 2024 to May 31, 2024.

Nathan Rich commented that he appreciated the Division staff’s patience with meeting with him and their thoroughness in spending time with him in walking through the regulations and addressing and clarifying how changes could or could not be made. Mr. Rich stated that although some changes were made, he would have liked some additional changes to be made, but he understands the reasoning for the outcomes and appreciated the staff’s responses and their willingness to consider his comments and is confident in making the motion for the Board to approve the formal rulemaking of the proposed changes to UAC R315-309 and UAC R315-310.

There were no additional comments or questions.

**It was moved by Nathan Rich and seconded by Mark Franc and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and public comment by publishing in the May 1, 2024, Utah State Bulletin and conducting a 30-day public comment period from May 1, 2024 to May 31, 2024, the proposed changes to UAC R315-309 and UAC R315-310.**

- B. Approval from the Board to proceed with final adoption of proposed changes to the Utah Solid Waste Rules R315-320 of the Utah Administrative Code 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 State Legislature (**Board Action Item**).

Tom Ball, X-Ray and Technical Support Manger in the Division of Waste Management and Radiation Control (Division), reviewed the request for approval from the Board to approve final adoption of proposed changes to the Utah Solid Waste Rules R315-320 of the Utah Administrative Code 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 State Legislature.

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Mr. Ball reminded the Board that at their Board meeting on February 8, 2024, the Board approved the proposed changes to UAC R315-320 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed changes were published in the March 1, 2024, issue of the Utah State Bulletin.

The public comment period for this rulemaking ended on April 1, 2024. No comments were received.

This is a Board Action item and the Director of the Division recommends the Board approve final adoption of the changes to UAC R315-320 as published in the March 1, 2024, issue of the Utah State Bulletin and set an effective date of April 15, 2024.

There were no additional comments or questions.

**It was moved by Jeremy Hawk and seconded by Dr. Codell and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to the UAC R315-320 as publishing in the March 1, 2024, Utah State Bulletin and set an effective date of April 15, 2024.**

### IX. X-Ray Program.

- A. Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to Radiation Control Rule R313-28 of the Utah Administrative Code to add the definition of “Healing Arts” (**Board Action Item**).

Tom Ball, X-Ray and Technical Support Manager in the Division of Waste Management and Radiation Control (Division), reviewed the request for approval from the Board to proceed with formal rulemaking and public comment on proposed changes to Utah Administrative Code (UAC) R313-28-20 of the Radiation Control Rules to add the definition of the term “Healing Arts”.

Mr. Ball stated that during a recent discussion with an X-ray registrant, it was suggested that a definition of the term “Healing Arts” was needed in the X-ray rules to assist the regulated community in understanding what is covered under the rules for use of X-rays in the healing arts. Division staff researched the issue and found several states that have definitions of the term in their rules. The definition being proposed for the Utah rules is essentially identical to those contained in the rules of other states.

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 recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the May 1, 2024, Utah State Bulletin the proposed changes to UAC R313-28-20 and conducting a public comment period from May 1, 2024 to May 31, 2024.

Jeremy Hawk asked for clarification of the term “Healing Art”. Mr. Ball stated that ““Healing arts” means any system, treatment, operation, diagnosis, prescription, or practice for ascertaining cure, relief, palliation, adjustment, or correction of any health indications, human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition”.

There were no additional comments or questions.

**It was moved by Dr. McIff and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and public comment by publishing in the May 1, 2024, Utah State Bulletin and conducting a 30-day public comment period from May 1, 2024 to May 31, 2024, the proposed changes to Radiation Control Rule UAC R313-28.**

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### X. Director's Report.

Director Hansen reviewed the following bills that passed during the 2024 Utah State Legislative session.

Director Hansen reported that House Bill 107, Recycling Facility Transparency Amendments, sponsored by Representative Welton passed and was signed by the Governor. Director Hansen reminded the Board that this bill requires that facilities that recycle and are paid for this work through a municipality, to report recycling data to the Division of Waste Management and Radiation Control (Division). Municipalities are then required to provide a report to their constituents twice a year to inform them of these recycling efforts.

Director Hansen reported that House Bill 335, State Grant Process Amendments, sponsored by Representative Peterson passed. This bill enacts provisions governing the administration of state grants. Director Hansen reported that this bill impacts the Used Oil (UO) Program in the Division in relationship to grants provided to the local health departments (LHDs) and other entities that apply. Director Hansen stated in the original bill language that this bill may have created some issues, however, a substitute bill was presented and approved, and allows for the UO Program to effectively continue issuing grants for the Used Oil Program.

Director Hansen reported that House Bill 470, Federal Agency Regulatory Review Amendments, sponsored by Representative Snider passed. This bill relates to what is known as the Chevron deference or Chevron doctrine. This bill addresses state agency review of federal regulations. "Chevron deference" is given to a federal agency to interpret federal statute. The Supreme Court previously determined that, based on certain conditions, agencies are the subject matter experts and should be provided the opportunity to apply the law within the context of that expertise. Director Hansen stated that this bill essentially says if the Supreme Court completely overturns the Chevron doctrine, the state agencies that enforce federal law then have the responsibility to review any federal rules they implement to determine if the Chevron Doctrine was relied on by the federal counterpart to develop the rule. There are a couple of cases before the Supreme Court this year that could trigger the requirement for review. Director Hansen stated that at this time it is unclear of the impacts of the passage of this bill.

Director Hansen reported that House Bill 300, Court Amendments 2024, Sponsored by Senate Cullimore passed. This bill amends provisions related to courts. Director Hansen stated that this bill may affect the way the Division conducts its work from a legal perspective as this bill changes the court jurisdiction on some matters for appeals to a new Court to be established, causing a change in venue for some of the appeal actions moving forward.

Director Hansen commented on Senate Bill 57, Utah Constitutional Sovereignty Act, sponsored by Senator Sandall, previously addressed by Director Everett. This bill establishes a framework for the Legislature to prohibit the enforcement of a federal directive within the state by government officers if the Legislature determines the federal directive violates the principles of state sovereignty and sets up the Federalism Commission and that is the commission the Division will be reporting to as a result of House Bill 373.

Director Hansen reminded the Board that with the passage of House Bill 373, Environmental Quality Amendments, sponsored by Representative Snider and Senator Sandall, requires meetings to occur between the Federalism Commission and UDEQ. The adopted version of the bill acknowledges the importance of having a working body for the UDEQ in moving toward establishing relationships with legislature and communicating with them.

Director Hansen stated that the 2024 Utah State Legislative Session was a busy one, and anticipates based on his review of the past three years, the same for the 2025 session.

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Director Hansen informed the Board of two rulemaking matters that will come before the Board in the near future, Exploration and Production Waste Draft Regulations and Environmental Assessment for Uranium Recovery Program Draft Regulations and provided the following information regarding them.

Exploration and Production Waste Draft Regulations (Rules). Director Hansen reported that the development of the creation of these Rules was required by the Division. These rules specifically involve wastes generated under exploration and production activities primarily in the Uintah Basin area of the state and that have fallen outside of the Division's solid waste regulations. Director Hansen stated that legislation was passed that brought these Rules to be administered by the Division of Waste Management and Radiation Control, Utah Department of Environmental Quality, instead of the Division of Oil, Gas and Mining, Utah Department of Natural Resources. Director Hansen commented that moving an entire industry from one regulatory framework into another has taken a great deal of effort, time, and coordination between the two agencies. Director Hansen informed the Board that the Division is finally at the point where Rules have been developed and will be presented at a public meeting on Wednesday, April 17, 2024, and invited all Board members interested to attend. Director Hansen stated that the Division will be presenting the Rules and seeking feedback on the Rules. Director Hansen stated that a lot of outreach in process in drafting the Rules has occurred. However, the Division will continue targeted outreach efforts by having a one-on-one meeting with any stakeholder(s) effected by the Rules.

Environmental Assessment for Uranium Recovery Program Draft Regulations (EA Rules) have been updated. Director Hansen informed the Board that various stakeholders have been included in the efforts of drafting the EA Rules. Director Hansen reported that the Division has submitted the Rules to the Nuclear Regulatory Commission (NRC) for their review and feedback and the NRC has responded indicating the proposed rules are an improvement over the current ones. Director Hansen informed that Board that this matter will be brought before the Board in the near future.

Dennis Riding asked the name of the lead Division staff member responsible for the Exploration and Production Waste Draft Rules efforts. Director Hansen informed Mr. Riding that Brian Speer, Solid Waste Section Manger, and the Assistant Division Director, Jalynn Knudsen, are taking lead on this matter.

There were no additional comments or questions.

### XI. Election of Board Chairman and Vice Chairman (**Board Action Item**).

Chairman Mickelson informed the Board that each year (April timeframe) a Board Chairman and Vice-Chairman must be elected. Chairman Mickelson conducted the elections.

Chairman Mickelson requested nominees to serve as Board Chairman.

Mark Franc nominated Brett Mickelson to serve as Board Chairman. No other nominees were presented.

**It was moved by Marc Franc and seconded by Shane Whitney and UNANIMOUSLY CARRIED for Brett Mickelson to serve as Board Chairman. (Chairman Mickelson abstained from voting.)**

Chairman Mickelson requested nominees to serve as Board Vice-Chairman.

Mark Franc nominated Dennis Riding to serve as Board Vice-Chairman. No other nominees were presented.

**It was moved by Mark Franc and seconded by Vern Rogers and UNANIMOUSLY CARRIED for Dennis Riding to serve as Board Vice-Chairman.**

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### XII. Other Business.

#### A. Miscellaneous Information Items.

Kim Shelley, Executive Director of UDEQ, informed the Board that the Division of Air Quality is considering amendments to the existing statute UAC R307-328, also known as gasoline transfer and storage rule. These amendments would further reduce volatile organic compound emissions from gasoline dispensing stations. There will be an opportunity to provide feedback before it is presented for formal rulemaking to the Air Quality Board, and additional information can be found on Air Quality's website.

#### B. Scheduling of next Board meeting (May 9, 2024).

The next meeting is scheduled for May 9, 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](https://meet.google.com/gad-sxsd-uvs)

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

### XIII. Adjourn.

The meeting adjourned at 3:00 p.m.