

# MEETING MINUTES APPROVED ON JUNE 13, 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  
May 9, 2024  
1:30 p.m.

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

**Board Members Participating Virtually:** Dr. Richard Codell, Nathan Rich, Scott Wardle

**Board Members Excused/Absent:** Danielle Endres

**UDEQ Staff Members Participating at Anchor Location:** Doug Hansen, Tom Ball, Brenden Catt,  
Tyler Hegburg, Avery Holyoak, Jalynn Knudsen, Arlene Lovato, Kari Lundeen, Judy Moran, Deborah Ng,  
Stevie Norcross, Bret Randall, Mike Pecorelli, Elisa Smith, Otis Willoughby, David Wilson, Rachel Winters,  
Raymond Wixom

**Others Attending at Anchor Location:** Steve Gurr, Mike Zody

**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.**

Mike Zody, legal counsel for Energy Fuels, provided a comment regarding Agenda Item IX.

Mr. Zody commented that Energy Fuels appreciates the staff's collaborative work on this rule and the extensive stakeholder involvement as they have done great work and have had several discussions. The company does have a few remaining concerns with some text and may file comments.

## **III. Declaration of Conflict of Interest – None.**

## **IV. Approval of the meeting minutes for the April 11, 2024, Board meeting (Board Action Item).**

**It was moved by Dr. Codell and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve the April 11, 2024, Board meeting minutes.**

## **V. Petroleum Storage Tanks Update.**

Mike Pecorelli, Environmental Assurance Program Section Manager, Division of Environmental Response and Remediation (DERR), informed the Board that the estimated cash balance of the Petroleum Storage Tank (PST) Enterprise Fund for the end of April 2024, is \$34,113,643.00. 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.

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## VI. Petroleum Storage Tanks Rules.

### A. Approval of proposed changes to Petroleum Storage Tanks Rules UAC R311 for initial publication and 30-day public comment period (Board Action Item).

Avery Holyoak, Leaking Underground Storage Tank Remedial Assistance Section Manager, DERR, informed the Board that the DERR is proposing changes to R311, the Utah PST Rules. This item was presented as an action item. The DERR is requesting Board approval to proceed with the initial publication and 30 day public comment period for these proposed changes.

In preparation for filing, the draft rule packet was submitted to the Division of Administrative Rules for pre-filing review. Some suggested edits were received to wording and templates but not to the actual rule changes.

The rules to be amended are:

R311-201. Petroleum Storage Tanks: Certification Programs and Underground Storage Tank (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.

The question was asked why some of the changes suggested by the Division of Administrative Rules were not made at this time. Ms. Holyoak explained that these changes were to formatting and did not change the meaning of the rule. It was felt that in the interest of time, formatting changes will be addressed in the future with further stakeholder involvement.

**It was moved by Jeremy Hawk and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and public comment by publishing in the June 1, 2024, Utah State Bulletin and conducting a 30-day public comment period from June 1, 2024, to July 1, 2024, the proposed changes to UAC R311-201, R311-203, R311-204, and R311-206.**

## VII. Low-Level Radioactive Waste.

### A. EnergySolutions request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive an exemption from the treatment standards for uranium extraction process residues encased in cement for macroencapsulation (Information Item).

Tyler Hegburg, Environmental Scientist, Low-Level Radioactive Section, Division of Waste Management and Radiation Control, introduced Steve Gurr, EnergySolutions representative, who presented this site-specific treatment variance request to the Board. Mr. Gurr informed the Board that EnergySolutions seeks authorization to receive an exemption from the treatment standards for cemented uranium extraction process residues. This exemption request is for the purposes of safety, security, and transportation.

Mr. Gurr explained the packaging procedures include repackaging the 2 ½ gallon can into 16-gallon drums and filling the void spaces with cement; which is then placed within one of EnergySolutions macro vaults. Mr. Gurr commented that encasing enriched uranium within concrete is the preferred method of stabilization as recommended by the Nuclear Regulatory Commission (NRC). The generator has assessed other options, including treatment for the hazardous constituents; however, additional processing introduced unacceptable hazards from a health and safety and security viewpoint. Additionally, the generator confirms that the cans in their current form are safe. The leachability of the waste would be significantly reduced through

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macroencapsulation, thereby protecting human health and environment. The RCRA constituents involved with this waste are primarily metals.

Mr. Gurr informed the Board that EnergySolutions has requested this same variance a total of 15 times in letters dating back to 2007; this request will be number 16. Since the last variance request, approximately 1,793 cubic feet have been received. This variance is being requested for approximately 2,000 cubic feet of cemented uranium extraction process residuals as part of uranium recovery processes at the generator's facility. This variance request is anticipated to continue into the future.

A notice for public comment was published in the *Salt Lake Tribune*, the *Deseret News*, and the *Tooele Transcript-Bulletin* on May 1, 2024. The comment period began May 2, 2024 and will end on May 31, 2024.

This is an informational item before the Board. The Director will provide a recommendation following the public comment period at the next Board meeting.

There were no comments or questions.

**B. EnergySolutions request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive an exemption for the direct macroencapsulation treatment of lithium and lithium-ion batteries (Information Item).**

Tyler Hegburg, Environmental Scientist, Low-Level Radioactive Section, Division of Waste Management and Radiation Control, introduced Steve Gurr, EnergySolutions representative, who presented this site-specific treatment variance request to the Board. Mr. Gurr informed the Board that EnergySolutions seeks authorization to receive an exemption for the direct macroencapsulation treatment of lithium and lithium-ion batteries.

Lithium and lithium-ion batteries typically exhibit the hazardous characteristics of ignitability (D001) and reactivity (D003). Regulations in Utah Admin. Code R315-268-40 require the removal of the characteristic codes prior to disposal. The U.S. Environmental Protection Agency (USEPA) has ruled that intact batteries are containers and not considered debris under the definition that would allow them to be normally macroencapsulated. In order for lithium batteries to meet the definition of debris they would need to be shredded and mixed with chemicals to deactivate them and then they could be macroencapsulated.

Mr. Gurr explained that for EnergySolutions to meet the regulatory standards, lithium and lithium-ion batteries would need to be shredded and mixed with chemicals to deactivate them; or punctured (and then considered debris) to macroencapsulate them. Both activities (shredding and puncturing) severely agitate the waste and would expose the reactive portion of the waste to open air which could cause an adverse reaction or explosion. Although this type of waste management is possible, from a safety and health standpoint, it is inappropriate.

Mr. Gurr informed the Board that EnergySolutions has requested this same variance three times previously dating back to 2021. Over the years 2021, 2022, and 2023, all requests have been reviewed and approved by the Board. The waste quantities have remained similar over this time period, with EnergySolutions receiving roughly 800 pounds per year and EnergySolutions anticipates receive similar waste volumes in the next 12 months under this current variance.

A notice for public comment was published in the *Salt Lake Tribune*, the *Deseret News*, and the *Tooele Transcript-Bulletin* on May 1, 2024. The comment period began May 2, 2024 and will end on May 31, 2024.

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This is an informational item before the Board. The Director will provide a recommendation following the public comment period at the next Board meeting.

Nathan Rich questioned if the lithium ion batteries are also radioactive? Mr. Gurr answered yes, and stated that in order for EnergySolutions to accept the batteries, they have to be both radioactive and hazardous as well.

Nathan Rich asked the status of the batteries, i.e., have they been discharged or do they still have a charge. Mr. Gurr stated that the batteries could be both. However, he believes most facilities disposal of their batteries at the end of their life cycle; however, some are still active.

Nathan Rich said that if concrete is poured over them, the water in the concrete, would then allow those active to safely discharge. Mr. Gurr agreed with that statement and clarified that the two hazardous characteristics of ignitability and reactivity would then be removed at that point.

### **VIII. Hazardous Waste Section.**

#### **A. Proposed Stipulation and Consent Order between the Director and Big West Oil LLC (Information Item).**

Judy Moran, Environmental Scientist, Hazardous Waste Section, in the Division of Waste Management and Radiation Control, reviewed the Proposed Stipulation and Consent Order (SCO) No. 2207085 between the Director and Big West Oil LLC (Big West) to resolve Notice of Violation and Order to Comply (NOV/OC) No. 2107073 issued to Big West on January 5, 2022.

The NOV/OC was based on information documented during an inspection at the refinery on July 7, 2021. The violations noted in the NOV/OC have been resolved.

The SCO includes a total penalty of \$47,934.00, of which half (\$23,967.00) will be deferred and waived by the Director if Big West complies with the terms in the SCO.

A notice for public comment was published in the *Salt Lake Tribune* on April 28, 2024, the *Deseret News* on April 24, 2024, and the *Davis Journal* on April 25, 2024. The 30-day public comment period began on April 29, 2024 and will end on May 28, 2024.

This is an informational item before the Board. The Director will provide a recommendation following the public comment period at a future meeting.

Mark Franc stated that the inspection occurred on July 7, 2021, and asked if it was an annual inspection that occurred. Ms. Moran stated that it was not an annual inspection; large quantity generators are inspected every three to five years. Mr. Franc asked if there have been any other inspections since the July 7, 2021 inspection. Ms. Moran stated no, but she will be inspecting them during this fiscal year.

Mr. Franc commented on the timeframe it has taken to get to the point of resolving this matter and asked for an explanation of the process as the violations were noted in the July 7, 2021 inspection. Mr. Franc further commented that the Board has previously talked about these types of matters and the process involved, and reiterated how it would be advantageous for the Board to gain a better understanding of the entire process regarding these matters including how fines/violations are determined. Also, Mr. Franc stated he is curious as to why the process takes so long to get resolved and to the point of the issuance of this stipulation and consent order.

Director Hansen commented that these types of facilities are complicated and the compliance issues associated with them are often difficult. Director Hansen stated that even before a Notice of Violation

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(NOV) is issued there is a process involving back and forth of addressing matters between the facility and the Division, so the Division can understand all the circumstances and if the violations are warranted, etc. Director Hansen stated that the back and forth process takes time, as the Division allows the facility every opportunity to provide clarification and any additional information that may be relevant, so a clear understanding of the full circumstances of the observations of violations are evaluated. Director Hansen further explained that once the Division issues an NOV, the facility has an opportunity to contest the NOV within 30 days. If the facility does not contest the NOV within the 30 days, it is considered final. At that point, the Division's options for resolution are either to enter into the process of negotiating a stipulation and consent order or to take the matter to the district court. Director Hansen stated that the Division's preference is to negotiate with the facility, spending the Division's resources to come to an agreeable resolution for the facility to achieve compliance with an appropriate penalty agreed upon, etc. Director Hansen stated that it is incumbent on the Division to make the first proposal on the stipulation and consent order, and once that is completed, the negotiations of back and forth between the parties begins to guarantee that the Division achieves its objectives as an agency, safeguarding and protecting the environment. Director Hansen further stated that part of the process is ensuring that all of the steps that the facility has taken to rectify the matter have been achieved, which is why there may be a variance in time. Director Hansen commented that most inspections are relatively straightforward and simple and the process to resolve any issues happens fairly quickly; however, larger facilities that have more violations/compliance issues tend to take a longer amount of time to resolve.

Mr. Franc thanked Director Hansen for his explanation and commented that the procedure described by Director Hansen is a fresh procedure compared to many states he has seen where you can go from an inspection directly to receiving a NOV. Mr. Franc stated that the desire for the State to look at all the regulated community issues is very beneficial and is worth the time it takes to complete these types of matters.

Mr. Franc stated that he is curious about the inspection frequency of these types of facilities and reviewed the inspection frequency of the facilities he is familiar with in the solid waste industry. Mr. Franc asked if it was a regulatory rule that mandates the three to five year inspection time frame for large quantity generators (LQGs). Mr. Franc commented that because these facilities are generators of hazardous waste, he thought inspections should occur more often. Ms. Moran informed the Board that the time frame for inspecting LQGs is not a mandated regulatory rule, instead it is based on the number of LQGs that need to be inspected and the availability of Division staff. The staff's goal is to inspect 25% of the LQGs each year and the Division has an agreement with the U.S. EPA to achieve this amount. Mr. Franc stated the frequency time frame is determined from the available staff to inspect the volume of LQGs, rather than any statute. Ms. Moran agreed.

Dennis Riding stated that he does not recall previously addressing any matters associated with Big West and asked if they are a repeat offender or is this a new situation for them.

Ms. Moran stated she does not have a complete compliance history for Big West in front of her but believes this is their first notice of violation being brought before the Board. Ms. Moran informed the Board that she has only been with the Division since 2020, so her familiarity before that date is reduced. Ms. Moran commented that she has verified that Big West is in compliance through documentation/photographs they provided after the inspection and Big West has also committed to completing other items that are over and above what the regulations require to ensure a better compliance path forward.

Mr. Riding asked if it is Ms. Moran's assignment to inspect Big West again or is that assignment spread out amongst all the inspectors. Ms. Moran stated that the inspection assignments are spread out amongst all the inspectors in the Hazardous Waste Section, but because of staff turnover, she anticipates she will be the one assigned to inspect them during their next inspection cycle.



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Mr. Riding asked if any comments have been received during the public comment period. Ms. Moran stated that she not aware of any public comments received, but will confirm and report back.

Mr. Franc asked if the Division has any indication or feel regarding how well the facility has done in correcting the violations found during the inspection. Ms. Moran stated that the facility has provided documentation regarding their correcting the violations, and commented that this process is part of the back and forth that Director Hansen discussed previously. Ms. Moran informed the Board that even prior to the Division issuing the Notice of Violation, meetings occurred with Big West and they were working with her to obtain all the necessary documentation of their compliance including photographs and records. Ms. Moran informed the Board that Big West has also experienced some staff turnover that may have contributed to some of the violations identified. Ms. Moran further commented that the facility is currently in compliance and seems Big West is on the right track and is implementing best management practices going forward and she is optimistic things will improve.

Nathan Rich had specific concerns regarding Items 19 through Item 24 in the Stipulation and Consent Order (SCO) and asked if these were items that were not fully addressed in the requests for additional information or are these items that are mentioned as extra requirements. Mr. Rich reviewed the documents required within the SCO and questioned why these documents were included in the SCO rather than these being matters that the facility would not have already taking care of, etc. Specifically, Mr. Rich questioned if Items 19 through Item 24 are items that were not fully addressed in the requests for additional information or are these extra regulatory items that are needed to ensure that the facility is in compliance. (There are items that requires the facility to provide additional documentation within 120 days of the SCO.) Ms. Moran stated that those items mentioned in the SCO are extra regulatory items and explained that these items will make it clearer for inspectors as sometimes when staff conduct the inspections at these types of facilities it can be complicated. Ms. Moran stated that inspecting refineries is probably the most complicated type of facility to conduct. Therefore, these additional information items will make it clearer for the inspectors and for the facility to remain in compliance.

Director Hansen clarified that the additional items outlined in the SCO are included because at the time of the inspection it was very difficult for the inspectors to determine whether the facility staff was properly trained and whether the right people were doing the right jobs, etc. Director Hansen stated that often times some of the documentation obtained at larger facilities is either presented to the Division staff in either a large binder or just in a box of paperwork. So, this is the Division's attempt to gather the information in a more clear and concise way. By doing this, moving forward, the inspectors do not have to have a lengthy conversation at the time of inspection or after because inspectors did not see something because it could not be found in the facilities record keeping methods. Hence, that is why this was added to help Big West create a method of documentation where they are in a better situation to answer the questions required by the Division inspectors.

Mr. Rich stated that it does make sense to require these types of facilities to go through the type of exercise Director Hansen explained above, so the facility can understand and document what they are doing and can then explain it to the inspectors. Mr. Rich further commented that the information provided to the Board does indicate some failure with this facilities ability to understand and regulate their own operations and hopefully this will assist in that endeavor.

**B. Clean Harbors Grassy Mountain, LLC request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to treat baghouse dust containing High Subcategory Mercury by stabilization instead of retort and recovery (Information Item).**

Kari Lundeen, Environmental Scientist, Hazardous Waste Section, in the Division of Waste Management and Radiation Control, reviewed Clean Harbors Grassy Mountain, LLC request to the Director of the Division of Waste Management and Radiation Control for a site-specific treatment variance from Utah Hazardous Waste Management Rules. Clean Harbors Grassy Mountain, LLC has requested an exemption from the treatment

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standards and proposes to use stabilization to treat baghouse dust from the Clean Harbors Aragonite, LLC incinerator.

The baghouse dust contains High Mercury Subcategory residue wastes that would normally be sent for retort and recovery. However, the baghouse dust carries waste treatment codes that the retort facilities are not permitted to accept. So, Clean Harbors Grassy Mountain, LLC has completed stabilization treatability studies on this waste and demonstrated that they can successfully treat it to the land disposal restriction standard for mercury of 0.025 mg/L TCLP. Clean Harbors Grassy Mountain, LLC will confirm that the treated waste meets land disposal restriction (LDR) standards prior to its final disposition.

The Board has previously granted this treatment variance for the same waste stream five separate times.

A notice for public comment was published in the *Salt Lake Tribune*, the *Deseret News*, and the *Tooele Transcript-Bulletin* on May 1, 2024. The comment period began on May 2, 2024, and will end on May 31, 2024.

This is an informational item before the Board. The Director will provide a recommendation following the public comment period at the June Board meeting.

There were no comments or questions.

## IX. Administrative Rules.

### A. **Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to UAC R313-17 and UAC R313-24 of the Radiation Control Rules (Board Action Item).**

Stevie Norcross, PhD, Assistant Director, 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 changes to UAC R313-17 and UAC R313-24 of the Radiation Control Rules to provide clarity around the environmental assessment process and make updates that are consistent with the Conference of Radiation Control Program Directors (CRCPD) Suggested State Regulations (SSR). Dr. Norcross stated that neither of these rules have equivalents in the federal regulations. These proposed rule changes are specifically applicable to the uranium recovery program.

Dr. Norcross informed the Board that there has been significant effort that has gone into coming up with the proposed rule change language and through a PowerPoint presentation will provide some background on the Division's regulatory authority in regard to the uranium recovery program and the efforts made to get to this point. Dr. Norcross then presented the PowerPoint titled "Rule Updates to Clarify the Environmental Assessment (EA) Process" (see the PowerPoint presentation attached to the meeting minutes).

Dr. Codell thanked Dr. Norcross for the presentation and stated that, having worked at the NRC, his question refers to an environmental and safety analysis initiated as he questioned if there was anything that would be equivalent to an environmental standard review plan (ESRP) incorporated in the rules. Dr. Codell stated that these plans are very detailed plans about what is supposed to be in the environmental report that the user can follow and the regulator can check against. Dr. Codell stated he is familiar with this from a nuclear power plant construction scenario, but he is not sure what other parts of the agency did regarding this matter. Dr. Norcross stated that something similar to what Dr. Codell is referring to has not been included, but that developing like an ESRP has come up, and that the Division is considering putting together a guidance that can also be provided to the regulated entities so they know more specifically what the expectations are. Dr. Norcross commented that what Dr. Codell mentioned above would be a good reference to look into to see the structure of what may be included in a Division guidance. Dr. Codell informed Dr. Norcross that the NRC website could provide additional examples and information on ESRPs.

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Dr. Codell asked if the State deals with environmental justice issues (i.e., building a waste dump in someone's backyard in a poor neighborhood). Dr. Norcross stated that a significant amount of outreach has been conducted with stakeholders, and one of the stakeholders is the Ute Mountain Ute Tribe, and they are potentially an environmental justice impacted community. Their feedback and input are sought for rulemaking, licensing actions, and anything that could potentially impact the Ute Mountain Ute reservation as it is in close proximity to one of the uranium mills. The Division is doing what is needed to ensure they are engaging them in the process. However, we do not have anything defined specifically around environmental justice, but both the NRC and the U.S. EPA (federal partners) are making suggestions on how to address environmental justice and have some guidance around this issue.

Vern Rogers had three questions. The first, Dr. Norcross indicated these rules give the Division or the Director specifically more flexibility in evaluating and considering things that may not have been evaluated previously in the licensing process and questioned why that is not already available in the current rules.

Mr. Rogers' second question is about the prohibition or the licensing to be denied prior to the start of construction. If construction is limited to removing vegetation, building the building, digging the holes, etc. but does not necessarily involve direct contact or management of the mill tailings, why would that prohibit granting that license?

Mr. Rogers' third question is that, as he understands the rules, there is a separate set of boundaries that the State has promulgated on establishing rules that are more stringent than most from the NRC. If the licensee is allowed to do something under the NRC equivalent rule, then this perhaps limits them or restricts them on what they can do and asked how the Division has evaluated this stringency requirement the State is under.

Dr. Norcross reviewed the rule language and stated that she would argue there is nothing in UAC R313-24 that is changing the processes as the proposed language is consistent with the suggested State regulations and consistent with the procedures. Dr. Norcross stated that it really deals with a lot of clarification around what expectations are and that would be the same feedback that we would give when we're going back and forth with an applicant when they submit an environmental report as the Division just wants to make sure that is very clearly defined in the rules so that our stakeholders and regulated entities have that information up front, but she stated that she thinks what Mr. Rogers is referring to is the language in UAC R313-17 where it states, "a change... that is likely to significantly impact public health, public safety or the environment as compared to impacts previously evaluated." Dr. Norcross explained that the whole substance of this rule is to identify changes that would potentially have a significant impact on public health, safety, or the environment, and the goal is to make it very clear that it is as compared to what was previously evaluated, so that we're not reevaluating the same thing if there's a record already available to make that decision off of. Dr. Norcross also stated that she would also argue that we're not changing anything that would trigger a major amendment or the environmental report process again. Instead, we are just providing greater clarity around what's there, which addresses Mr. Rogers' stringency question. Per our review, we are not doing anything that is more stringent than the NRC.

Dr. Norcross informed the Board that the NRC did approve our current rules that she presented during her presentation. Since becoming an agreement State, we are now incorporating more clarity into those rules based on CRCPD's Suggested State Regulations, which are compatible and consistent with NRC expectations.

Dr. Norcross stated after her review of the proposed rule changes, there is not a stringency issue. However, Mr. Rogers is correct that we have to make a very strong argument if we want to be more stringent than the federal government, and there is a process to follow that did not have to occur in this instance.

Mr. Rogers asked if he was correct in saying that the current rules would allow you to do all of this, but this is just making it clearer to a licensee or an applicant.



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Director Hansen clarified that it also makes it clearer for other stakeholders as well because the Division gets a lot of questions about the Division's process and what our expectations are set around an application from a licensee and how does that play out in your review and how do you get to position where you can issue or deny a license. Director Hansen stated that it just puts everybody on the same page with expectations and clarity around what it is that is going to be looked at and what we have looked at and where they are ending up in the process.

Dr. Norcross stated that regarding the construction question, the current rule states, "commencement of construction prior to issuance is grounds for a denial" She mentioned it wasn't consistent with the CRCPD Suggested State Regulations and NRC expectations, but it essentially functions the same, though it is better to tell the applicant/licensee up front that it's prohibited rather than just to deny the application at the end of the process. Dr. Norcross stated that the current language states construction, but it does not define construction, but there is actually a definition for construction in the rules under UAC R313-12-3, and it is very specific as to what is and is not construction.

Mark Franc stated he did look up the rule UAC R313-12-3, and it does specifically state what construction is, and it is related to the regulated material and the term construction did not include the items referred to in the previous discussion. Dr. Norcross stated that is why the definition was added in the rule, as the intent is to be clearer on the definitions.

Mr. Franc stated that he finds 12 stakeholder meetings fairly impressive and so the stakeholder involvement clearly was good and is curious to the general tone/reasons/concerns of the stakeholders during those meetings. Mr. Franc stated that it has been pointed out several times that the rules seem to be very effective and not really changing regulations, and they are clarifying regulations. So he is curious as to the tone or reason for the concerns of the stakeholders that were related to the changes in the regulations.

Dr. Norcross commented that for the most part, the tone was really good, and a lot of positive feedback and appreciation was expressed for including stakeholders and engaging them up front. A number of times the meetings would go on where they were not necessarily directly addressing the substance of the rules, and it was more the stakeholders expressing their concerns with some of these facilities. The stakeholders wanted us to hear their concerns and so we listened and then we would get targeted feedback specifically about the rule. Overall, the stakeholders had a lot of questions about how this process works, and through those stakeholder meetings, we were better able to explain to them what the environmental assessment process looks like and that's again why there's some specific additions to this rule where if it's something we're already able to do, for example the Director could extend the public comment period but some of the stakeholders want to know that is the case and make it very clear. So, we made it clear in the rule language based on the fact that there was a poor understanding of it. Dr. Norcross commented that she actually enjoyed going through the stakeholder meetings because it was important for the Division staff to make better connections not only with our regulated entities, but people that have interests in this program and felt it was a successful process.

Director Hansen commented that the one thing that surprised him in this process is there were several times when entities that you might think have a different perspective that wouldn't align shared feedback that was actually the same feedback. So, the point of providing clarification of the rule changes was not lost on stakeholders representing varied perspectives and points of view and actually in some cases got the exact same feedback and quite frankly the rules were approved because of the feedback that we got.

Director Hansen stated that overall he felt it has been a good process as anytime you make a change, not everybody gets exactly what they want and that has been part of the process of balancing interests while meeting the overall objective, including clarifying the processes so that everybody understands and is on the same page when they undertake one of these licensing actions.

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Mr. Franc stated that Director Hansen's above comments answered his follow-up question, which was more related to comment and impact of the community opposed to the regulator community and that the impacted community appears to have had just as much opportunity, and took the opportunity to comment, as much as the regulated community. Dr. Norcross reiterated that it was a really good process.

The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the June 1, 2024, *Utah State Bulletin* the proposed changes to UAC R313-17 and UAC R313-24 and conducting a public comment period from June 1, 2024, to July 1, 2024.

**It was moved by Vern Rogers and seconded by Mark Franc and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking by publishing in the June 1, 2024, Utah State Bulletin and conducting a 30-day public comment period from June 1, 2024 to July 1, 2024, the proposed changes to UAC R313-17 and UAC R313-24 of the Radiation Control Rules.**

### X. X-Ray Program.

- A. Approval from the Board for the Executive Secretary to extend the expiration date for certain Mammography Imaging Medical Physicists (**Board Action Item**).

Tom Ball, X-Ray and Technical Support Manager in the Division of Waste Management and Radiation Control, reviewed the request for approval from the Board for the Executive Secretary to extend the expiration date for certain Mammography Imaging Medical Physicists (MIMPS) whose certifications expire on May 31, 2024.

Mr. Ball explained that the Division has been working on modernizing the permit, licensing, registration, and certification processes moving them from paper-based systems to an online, electronic system. Due to some technical issues, the Division was not able to complete the transition of the process for the MIMPS Certifications and get those completed in the time-period anticipated, and so that affects those certifications that expire in May 2024, as the MIMPS were not able to submit their applications for renewal with the new process. The Division anticipates being able to complete the transition in the next couple of weeks, but because the MIMPS certifications are a Board responsibility, the Director of the Division does not have the authority to issue them or extend the expiration dates. So, the Director cannot approve renewing the certifications after the Board meeting and those certifications would expire at the end of May before the June Board meeting. To prevent this from happening, the X-Ray program is seeking approval to extend the expiration dates from May 31, 2024 to June 30, 2024.

This is a Board action item. Board approval is for the Executive Secretary to extend the expiration date of MIMP certificates. The Director of the Division of Waste Management and Radiation Control recommends the Board approve extending the expiration date for Mammography Imaging Medical Physicists certificates that expire on May 31, 2024, to June 30, 2024.

Dennis Riding asked the terms of the MIMPS licenses. Mr. Ball stated it is a three year term.

**It was moved by Dennis Riding and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED for the Executive Secretary to receive the Board's approval to extend the expiration date for certain Mammography Imaging Medical Physicists.**

### XI. Director's Report.

Director Hansen updated the Board on Jeremy Hawk's status of reappointment to the Board as his term is set to expire in July. Director Hansen reported that the Governor has approved Mr. Hawk's renewal application and anticipates the Senate will meet to confirm Mr. Hawk's reappointment in June, and a virtual link will be available for all interested Board members to attend virtually.

## MEETING MINUTES APPROVED ON JUNE 13, 2024

Director Hansen also expressed his appreciation to the Board for their willingness to serve in this role as he recognizes that this responsibility takes them away from their normal job duties or other things they might prefer to be doing and thanked them for all their efforts.

Director Hansen also thanked Arlene Lovato for all her efforts in ensuring that the process required for reappointing Board members is handled accordingly.

### **XII. Other Business.**

**A. Miscellaneous Information Items - None.**

**B. Scheduling of next Board meeting (June 13, 2024).**

The next meeting is scheduled for June 13, 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.

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# Rule Updates to Clarify the Environmental Assessment (EA) Process

Thursday, May 9, 2024  
Stevie Norcross, PhD



UTAH DEPARTMENT of  
ENVIRONMENTAL QUALITY  
**WASTE MANAGEMENT  
& RADIATION CONTROL**



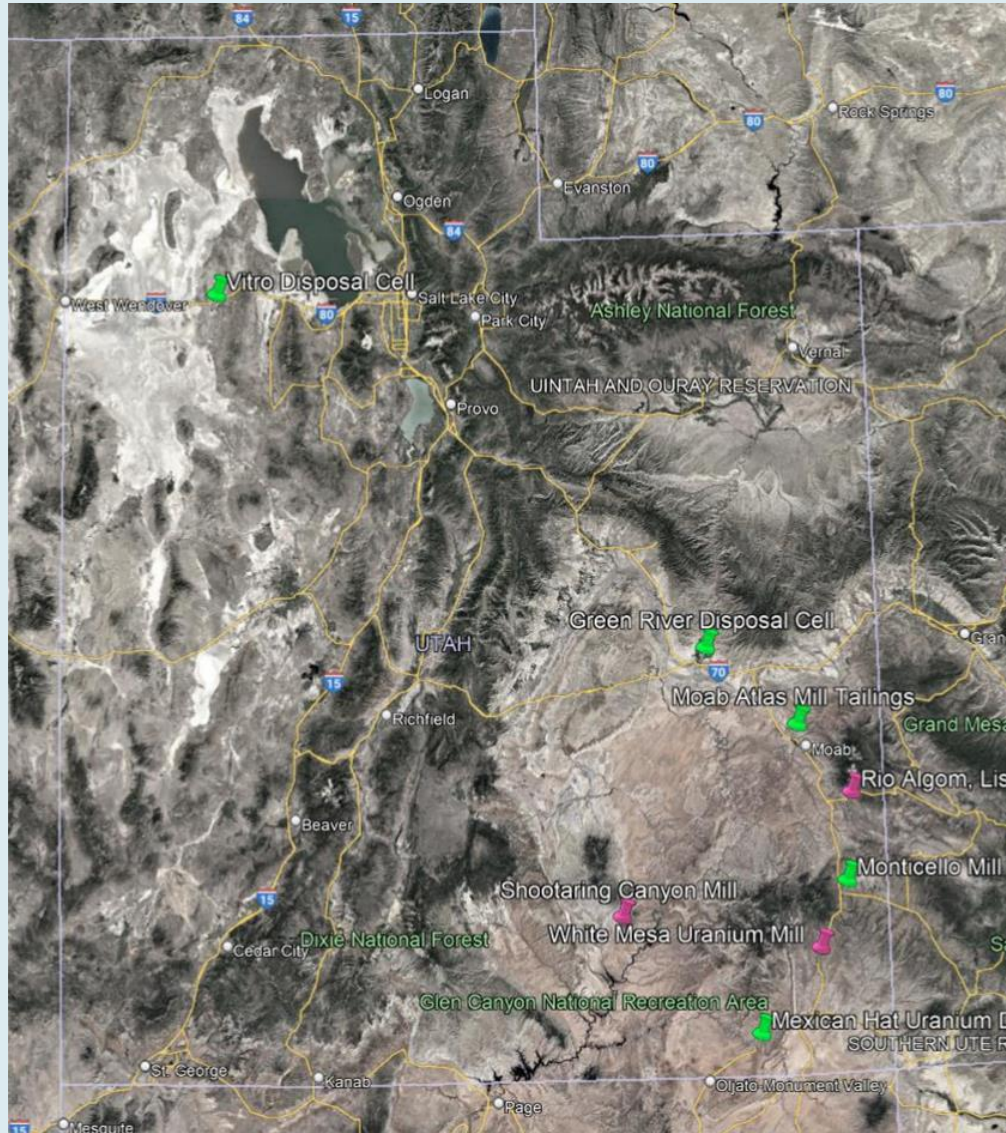
# Utah as an Agreement State with the Nuclear Regulatory Commission (NRC)

- 1984 - Utah became an Agreement State and assumed regulatory responsibility for the control of radioactive materials.
- 2004 - Utah was authorized by the NRC to administer the Uranium Recovery Program

Agreement State Status requires a program that is adequate to protect public health and safety and compatible with the NRC's program.



# The Utah Uranium Recovery Program Includes Three Uranium Mills + an 11e.(2) Disposal Cell



1. Former Lisbon Valley Mill, Rio Algom
2. Shootaring Canyon Mill, Anfield Resources Holding
3. White Mesa Mill, Energy Fuels Resources (USA) Inc. (EFRI)

11e.(2) Disposal Cell, Energy *Solutions*

# Agreement State Program Element Compatibility

- A = Should be essentially identical to those of the NRC
  - Basic radiation protection standards and scientific terms
- B = Should be essentially identical to those of the NRC
  - Have a particular impact on public health and safety
- C = Essential objectives must be met.
  - Important for orderly pattern of regulation on a nationwide basis.
- D = Not required for purposes of compatibility.

# Uranium Recovery (UR) Program Compatibility

Program Element	State Requirement	Compatibility Category
Uranium or Thorium Mill Licensing	Uranium/thorium mill and tailings program description and procedures	C

- UR requirements are under 10 CFR, Part 40, Appendix A.
- Conference of Radiation Control Program Directors(CRCPD)  
Suggested State Regulations (SSR), Part U

# The Current EA Rule Needs to be Updated to Account for Improvements Outlined in the Updated [CRCPD SSR's](#)

## Main Objective of the Rulemaking

To provide clarity around the EA process for regulated entities and associated stakeholders.

→ Increase efficacy of the EA process.

b. The applicant's environmental report, or supplement to applicant's environmental report, as appropriate, shall include information to assist the Agency in the evaluation of the short-term and long-range environmental impact of the project and activity so that the Agency may weigh environmental, economic, technical, and other benefits against environmental costs, while considering available alternatives.

# EA Rulemaking Timeline

01.

January & February, 2023

Announced the proposed rule change on DWMRC's website and sent a letter to regulated entities and associated stakeholders.

02.

March, 2023

Held the first of numerous stakeholder meetings as part of the preliminary comment process.



Stakeholder  
Meetings Held

03.

June, 2023

Provided the first updated draft rule language that incorporated appropriate stakeholder feedback.



Written, Preliminary  
Comments Received &  
Considered



# EA Rulemaking Timeline

**04.**

March, 2024

Submitted the proposed rule change language to the NRC for preliminary review.

**05.**

April, 2024

Received the NRC's assessment of Utah's proposed rule changes. No comments.

**06.**

May, 2024

Presenting the proposed rule change to the Board and requesting to initiate formal rulemaking and public comment.

# The 2004-Era EA Rule Under [Utah Admin. Code \(UAC\) R313-24](#)

## **R313-24-3. Environmental Analysis.**

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Director shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2

# Applicant's Environmental Report

## Current Language

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

- (a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;
- (b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;
- (c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and
- (d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

## Proposed Language

See R313-24-4 in proposed rule.

For example, “(2) The environmental report shall include specific information and data to assist the director in the identification and evaluation of the short-term and long-range environmental impacts...”

# Director's Environmental Analysis

## Current Language

**(3) The Director shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2**

## Proposed Language

See R313-24-5 in proposed rule.

For example, "...the director shall perform an independent analysis and prepare a written environmental analysis that includes the following elements, including consideration of environmental impact mitigation measures, as applicable..."

"...The director shall make available to the public, in connection with any public notice and comment period... any information or analysis provided or prepared... including any environmental analysis..."

# Construction Requirements

## Current Language

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

## Proposed Language

See R313-24-3 in proposed rule.

For example, “...Any application for a new license, license renewal, or a major licensing action identified in Subsection R313-17-2(1)(a)(i) that involves construction shall be... accompanied by the environmental report required by Section R313-24-4.

“...Construction, as defined in [Section R313-12-3](#), is prohibited unless the director has provided the necessary licensing and approvals for the construction.”



# R313-17 - Identifies Major Licensing Actions, which Trigger the EA Process

(F) [A] a change in engineering design, construction, or process controls that ~~[will more than]~~ is likely to:

(I) significantly impact public health, public safety or the environment as compared to impacts previously evaluated; or

(J) a licensing action that would allow for possession or use of any matter, other than natural or native ore, that will be processed primarily for its source material content in a licensed uranium or thorium mill; or

(3) Public notice shall allow at least 30 days for public comment. The director may extend the public comment period for good cause. Notice of extensions shall be provided as set forth in Subsection R313-17-2(5)(b).



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# Questions?

Stevie Norcross, PhD, Assistant Director

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**WASTE MANAGEMENT  
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