

Utah Solid and Hazardous Waste Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
August 14, 2014
1:30 p.m.

Board Members Present: Kevin Murray (Chair), Dennis Riding (Vice Chair), Jeff Coombs, Marc Franc, Brett Mickelson, Amanda Smith, Shane Whitney and Dwayne Woolley

Board Members Absent: Gene Cole

Staff: Brent Everett, Allan Moore, Thomas Ball, Gary Astin, Doug Hansen, Otis Willoughby, Ed Costomiris, Ralph Bohn, Raymond Wixom, Kimberlee McEwan, Deborah Ng, David Wheeler, Rick Page, Paul Zahn, Tina Mercer, Arlene Lovato, Terry Montgomery and Elisa Smith

Others: Michael Marlowe, Lonnie Brown, Jeff Schmidt, Anna Boguslvsy, Tim Orton, Bob Sobociskly, Dean Connett, Bill Nix and Brett Stephens

I. Call to Order.

Kevin Murray (Chair) called the meeting to order at 1:31 p.m.

II. Election of Board Chair.

Allan Moore conducted the election. Mr. Moore informed the Board that each year a board chairman and vice-chairman must be elected. Kevin Murray expressed interest in serving another year as the Board Chairman. No other Board members expressed interest in serving in this position.

It was moved by Dwayne Woolley and seconded by Brent Mickelson and UNANIMOUSLY CARRIED that Kevin Murray be elected as the Board Chairman.

Dennis Riding expressed interest in continuing to serve as the Vice-Chairmen. No other Board members expressed interest in serving in this position.

It was motioned by Shane Whitney and seconded by Jeff Coombs and UNANIMOUSLY CARRIED that Dennis Riding be elected as the Board's Vice-Chairman.

III. Approval of the Meeting Minutes for the April 12, 2014 Board Meeting.

It was moved by Dennis Riding and seconded by Dwayne Woolley and UNANIMOUSLY CARRIED to approve the June 12, 2014 Board Meeting minutes.

IV. Underground Storage Tanks Update.

Brent Everett informed the Board members that the preliminary cash balance of the Petroleum Storage Tank (PST) Trust Fund (Fund) at the end of July 2014 was \$17,807,551.00. The balance at the end of June 2014 was \$17,688,076.00. The cash balance of the fund has increased dramatically. House Bill (HB) 138 required the balance of the PST Loan Fund and the remaining funds from a Circle K settlement, which totaled approximately six million dollars, to be transferred into the PST Trust Fund.

This transfer took place the end of June 2014. The Division of Environmental Response and Remediation (DERR) will continue to watch the cash balance in order to ensure sufficient coverage for petroleum release liabilities that are covered by the Fund.

V. Underground Storage Tanks Rules.

Gary Astin, an environmental scientist with the DERR, requested approval from the Board for the underground storage tank (UST) proposed rule changes for publication and public comment. The Rules to be amended are:

R311-201 Underground Storage Tanks Certification Programs and UST Operator Training;

R311-204 Underground Storage Tanks Closure and Remediation;

R311-206 Underground Storage Tanks Certificate of Compliance and Financial Assurance Mechanism;

R311-209 Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation; and

R311-212 Administration of the Petroleum Storage Tank Loan Fund.

The proposed changes were presented to the Board in June 2014 as an information item. They have also been made available to stakeholders for informal comments. Two comments were received so far, one from a local marketer and one from a national tank manufacturer organization. These comments have been placed in the Board packet along with the DERR response to the comments. Based on the comments received to date, the DERR is not proposing changes to the proposed rules.

Due to internal review, there are a few clarifications and corrections that have been made. The clarification changes are regarding the risk model and the loan program. Language has been added to address how risk will be assigned for a facility entering the fund after the beginning of the year. The statute also requires a limit to be set to control the amount of funds available to be loaned from the PST fund. A rule has been added to allow any applications that were in process of review when the fund reached the maximum loan amount to be reviewed again once funds are available to be loaned.

If approved, the public comment period would take place during the month of September and be brought before the Board for final approval again in October.

Dennis Riding asked about the comment from the national tank manufacturer. Doug Hansen responded that the company raised three issues in their comment. These comments were about continuous monitoring, the level of training facilities offer, and concern about the risk model. In the risk model, fiberglass tanks are weighed as less risky. The DERR explained to the company that risk involves all tank factors combined and that the actual tank is only one factor.

It was moved by Mark Franc and seconded by Jeff Coombs and UNANIMOUSLY CARRIED to proceed with initial publication and a 30-day public comment period for proposed changes to the Underground Storage Tank Rules R311-201, R311-204, R311-206, R311-209, and R311-212.

VI. Final adoption of proposed changes to Hazardous Waste Rules R315-1-1 and R315-2-4 (Board Action Item).

Ralph Bohn, Manager, Planning and Technical Support Section, provided some history on these rules. At the March 13, 2014 Board meeting, the Board gave its approval to proceed with formal rulemaking and a 30-day public comment period for proposed changes to Hazardous Waste Rules, R315-1-1 and R315-2-4. The intent was to request final adoption of these proposed changes at the June 12, 2014 Board meeting. However, because of concerns regarding adequate notice to all stakeholders, the Division requested, during the June 12, 2014 Board meeting, Board approval to initiate a second formal

rulemaking and 30-day public comment period for proposed changes to Hazardous Waste Rules, R315-1-1 and R315-2-4.

The Division is now requesting final adoption by the Board of the proposed changes to Hazardous Waste Rules R315-1 and R315-2-4 with an effective date. The proposed rule changes were re-published in the Utah State Bulletin on July 1, 2014 with the comment period ending July 31, 2014. No comments were received. This rule did not have additional changes from the original proposed rule the Board received in its March 13, 2014 Board packet.

These proposed changes to R315-1-1 and R315-2-4 will allow some cloth and paper material that have been contaminated with certain solvents that are listed as a hazardous waste to be disposed as a solid waste or laundered. The US Environmental Protection Agency (USEPA) conducted a risk assessment for the disposal of cleaning rags and wipes that have been contaminated with several types of solvents. Formerly, these rags and wipes had to be disposed of as a hazardous waste. The results of the risk assessment indicated that these wastes, when disposed in a lined, non-hazardous solid waste landfill or when laundered, do not present an unacceptable risk to health and the environment. As a result, the USEPA has modified the federal rules to allow disposal in a solid waste landfill or laundering.

It was moved by Dwayne Woolley and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to Hazardous Waste Rules R315-1-1 and R315-2-4, with an effective date of August 15, 2014.

VII. Approve change in proposed rule changes to the Standards for Management of Used Oil Rule R315-15 (Board Action Item).

Ralph Bohn provided some history on these rules. At the March 13, 2014 Board meeting, the Board gave its approval to proceed with formal rulemaking and a 30-day public comment period for proposed changes to the Standards for Management of Used Oil Rule, R315-15. The intent was to request final adoption of these proposed changes at the June 12, 2104 Board meeting.

However, because of concerns regarding adequate notice to all stakeholders, the Division requested, during the June 12, 2014 Board meeting, Board approval to initiate a second formal rulemaking and 30-day public comment period for proposed changes to the Standards for Management of Used Oil Rule, R315-15. This proposed rule had additional changes from the original proposed rule the Board received in its March 13, 2014 Board packet. All proposed changes to these rules were provided to the Board on June 5, 2014 via email titled “Summary of changes to the Used Oil Rules Utah Administrative Code, R315-15.”

During the second public comment period, Safety-Kleen submitted comments on the proposed rule changes in a letter dated July 30, 2014. Based on the comments received from Safety-Kleen, three additional changes were made to the proposed rules. (A copy of Safety Kleen’s letter, DSHW Response to Comments, and the three proposed changes in the rules were provided in the August 14, 2014 Board packet).

Because these changes in the proposed rules were made, the Division of Administrative Rules (DAR) requires that notice be provided in the Utah State Bulletin on only the changes in the proposed rules and to wait at least 30 days before all the proposed changes in the rules can be finalized. The changes in the proposed rules will be published in the September 2, 2014, Utah State Bulletin. DAR does not require that these changes in the proposed rules go through another 30-day formal public comment period. DAR only requires a 30-day publication notice/period.

Jeff Coombs expressed concern that the general public could not make formal comments on the changes in the proposed rules. Mr. Bohn informed the Board that it is the Division's general policy, when public comments are received, to review them. He clarified that the administrative rules process does not require another formal public comment period.

Board members questioned if Safety Kleen has been or will be notified of the changes in proposed rules that were made based on its comments. Mr. Bohn stated that after the Board approves the change in proposed rules, Safety Kleen will be informed of the changes by letter. He suggested that Board approval could be contingent on no comments being received. Ralph also noted that the Board packet is available for the general public to review a week prior to the Board meeting. However, Safety-Kleen was not directly notified of where the information could be located.

Raymond Wixom stated if anyone from the general public is not satisfied with any of the rule changes, they can file for a petition for rulemaking or implement other actions to inform the Board of their concerns with the rule changes. Mr. Wixom also informed the Board that it has the authority to apply a public comment period to this action.

Mark Franc requested clarification as to why DAR requires the change in proposed rules be published for 30 days but without public comment. Ralph explained that DAR refers to it as a "Notice of Changes in Proposed Rule," not a notice of another public comment period. Even though not stated in the notice, the general public can still comment.

Kevin Murray clarified that there is not an obligation for the Board to accept comments during the 30 days. Mr. Bohn confirmed that there is no requirement to accept comments during this period.

Dennis Riding asked what would happen if the Board approves the changes subject to receiving no public comments, but public comments were received. Mr. Bohn stated he would come back to the Board in the October meeting and respond to those comments and either make additional changes or request that the Board approve the rules as published.

Mr. Bohn clarified that the Division is requesting Board approval of the proposed rule changes as published in the July Bulletin with the additional changes made based on the comments received from Safety Kleen. Because of these additional changes, the Board needs to approve the change in proposed rules and direct the Director of the Division of Solid and Hazardous Waste to file a "Change in Proposed Rule" to be published in the Utah State Bulletin on September 2, 2014 and set an effective date for Standards for Management of Used Oil Rule R315-15 of October 2, 2014.

It was moved by Brett Mickelson and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve Standards for Management of Used Oil Rule R315-15 as published and changes in the proposed rules that were made from response to public comments received and to publish the notice of changes to proposed rule changes in the September Bulletin, with an effective date of October 2, 2014. This approval is contingent on no new additional comments being received.

VIII. Hazardous Waste Section.

A. EnergySolutions LLC request for a variance from hazardous waste rules regarding treatment of mixed waste in a landfill cell (Board Action Item).

Otis Willoughby, Environmental Scientist, Hazardous Waste Section, reviewed the request from EnergySolutions for a variance from the Utah Hazardous Waste Management Rules regarding its in-cell macroencapsulation. EnergySolutions seeks authorization to continue to follow its current permit conditions.

EnergySolutions proposes to continue managing debris waste streams according to Attachment II-1-5, Macroencapsulation Plan. EnergySolutions deems this variance necessary due to a recent interpretive memorandum written by the USEPA. In this memorandum, the USEPA asserts that temporarily placing waste within a landfill cell, prior to treatment, constitutes disposal of waste that doesn't meet Land Disposal Restrictions. The Division is currently working with USEPA Headquarters and Region 8 to resolve this issue. In the meantime, EnergySolutions would like to continue to treat waste with the macroencapsulation process in the cell and believes the variance would allow such treatment.

A 30-day public comment period on the variance request began on May 29, 2014 and ended June 27, 2014. No comments or requests for a public hearing were received.

It was moved by Jeff Coombs and seconded by Dwayne Woolley and UNANIMOUSLY CARRIED to approve EnergySolutions LLC request for a variance from hazardous waste rules regarding treatment of mixed waste in a landfill cell.

B. EnergySolutions LLC request for a one-time site specific treatment variance to dispose of waste containing metals and PCBs without further treatment of the PCBs (Board Action Item).

Otis Willoughby reviewed the request from EnergySolutions for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of waste containing metals and PCBs without further treatment of the PCBs.

The Mixed Waste Facility proposes to receive two drums of waste contaminated with D006 (cadmium), D007 (chromium), D008 (lead) with nickel and PCBs as Underlying Hazardous Constituents. Post treatment analysis demonstrates that all applicable treatment standards were met except for the PCBs. If this waste was contaminated only with PCBs at this level, it could be disposed directly in the Mixed Waste Landfill Cell. EnergySolutions proposes to dispose of this waste without further treatment.

A 30-day public comment period on the variance request began on July 10, 2014 and ended August 8, 2014. No comments were received.

Tim Orton, EnergySolutions representative, stated that this waste will not be treated on-site as it has been previously treated by the generator. This waste was received at the site on June 23 2014 and has been placed in storage until the variance request is approved. EnergySolutions has performed tests on the waste and has demonstrated that it meets the treatment standards except for the PCBs, as expected. This is a one-time shipment of only two drums that will be disposed of in the hazardous waste landfill cell. The concentration of PCBs in the waste is 42 ppm. The Universal Treatment Standard (UTS) under hazardous waste rules is 10 ppm. The TOSCA treatment standard is 50 ppm. By rule, the PCBs must be treated to 10 ppm in accordance with the UTS.

It was moved by Dennis Riding and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve EnergySolutions LLC request for a one-time site specific treatment variance to dispose of waste containing metals and PCBs without further treatment of the PCBs.

C. EnergySolutions LLC request for a one-time site specific treatment variance to dispose of Cemented Uranium Extraction Process Residues without chemical stabilization (Board Action Item).

Otis Willoughby reviewed the EnergySolutions request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive Cemented Uranium Extraction Process Residues for disposal.

The Mixed Waste Facility proposes to receive up to 600 cubic feet of cemented monoliths containing enriched uranium residuals. This material retains hazardous waste codes for barium, cadmium, chromium, lead and spent solvents. The generator has encapsulated the waste in concrete for security reasons. EnergySolutions proposes to receive this waste for macroencapsulation in the Mixed Waste Landfill Cell rather than chemical stabilization, as required. This request is based on the fact that the waste has already been encapsulated in concrete at the generator's site. Treating this waste by the required method would mean grinding the waste and potentially exposing workers to unnecessary contamination. The proposed treatment will further encapsulate the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching.

A 30-day public comment period on the variance request began July 10, 2014 and ended August 8, 2014. No comments were received.

It was moved by Marc Franc and seconded by Dwayne Woolley and UNANIMOUSLY CARRIED to approve EnergySolutions LLC request for a one-time site specific treatment variance to dispose of Cemented Uranium Extraction Process Residues without chemical stabilization.

D. EnergySolutions LLC request for a one-time site specific treatment variance to receive hardened tank scale for disposal without treating the individual characteristic contaminants (Board Action).

Otis Willoughby reviewed the EnergySolutions request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive hardened tank scale for disposal.

The Mixed Waste Facility proposes to receive up to 800 cubic feet of hardened tank scale. This waste is characteristic for cadmium (D006), chromium (D007) and lead (D008). This material has proven extremely difficult to reduce to a size allowing effective treatment and the grinding produces dust that could potentially contaminate equipment and workers. EnergySolutions proposes to treat this waste using its macroencapsulation process without treating the individual characteristic contaminants. The macroencapsulation will seal the material from the elements and protect the environment from contact with the waste. Final disposal of these wastes will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

Tim Orton, EnergySolutions, explained that the hardened tank scale sludge was removed from an acid cleaning solution storage tank at the site of one of its generators. The physical form of the tank scale is large, solid, rocky pieces and cannot be ground down for treatment.

A 30-day public comment period on the variance began July 10, 2014 and ended August 8, 2014. No comments were received.

It was moved by Dwayne Woolley and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve EnergySolutions LLC request for a one-time site specific treatment variance to receive hardened tank scale for disposal without treating the individual characteristic contaminants.

E. EnergySolutions LLC request for a one-time site specific treatment variance to dispose of five drums of solidified liquid waste without chemical stabilization (Board Action Item).

Otis Willoughby reviewed the EnergySolutions request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of five drums of solidified liquid waste.

The Mixed Waste Facility proposes to receive five drums of liquid waste that have been solidified into monoliths by the generator. The liquid waste contained high levels of tritium contaminated with organic waste. EnergySolutions proposes to treat this waste by macroencapsulation in the Mixed Waste Landfill Cell rather than chemical stabilization as required. This request is based on the fact that the waste has already been encapsulated in concrete at the generator's site. Treating this waste by the required method would mean grinding the waste and potentially exposing workers to unnecessary contamination. The proposed treatment will further encapsulate the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching.

A 30-day public comment period on the variance request began July 10, 2014 and ended August 8, 2014. No comments were received.

It was moved by Jeff Coombs and seconded by Mark Franc and UNANIMOUSLY CARRIED to approve EnergySolutions LLC request for a one-time site specific treatment variance to dispose of five drums of solidified liquid waste without chemical stabilization.

F. ITT Exelis request for a variance from hazardous waste storage requirements (Board Action Item).

Ed Costomiris reviewed the ITT Exelis request for a variance from the Utah Hazardous Waste Management Rules. ITT Exelis is requesting approval to store ignitable waste within 50 feet of the property line, which is not allowed by R315-7-16.6 of the Utah Administrative Code.

ITT Exelis is located at 2645 South 300 West, Salt Lake City, Utah. The facility previously stored hazardous waste in an area away from the facility property line. The former hazardous waste storage area's function was changed and two new storage areas were prepared. The new storage areas have fire suppression systems. The new 90-day storage areas border 220 West on the east edge of the facility property line; 220 West is a public road that dead ends in property leased by ITT Exelis. ITT Exelis also leases the property on the east side of 220 West, north of 2700 South in Salt Lake City, Utah.

A 30-day public comment period on the variance request began June 10, 2014 and ended July 10, 2014. No comments were received.

ITT Exelis is planning to build a new storage facility that will be greater than 50 feet from the property line, which should be completed within the year. If not, another variance will be requested.

Kevin Murray disclosed that he provides environment counsel to South Salt Lake City. However, he has not had any involvement in this matter, and therefore will not recuse himself. Mr. Murray asked if South Salt Lake concurs with this request.

Mr. Costomiris explained that the South Salt Lake Fire Department Fire Marshall has inspected the new storage areas and indicated in correspondence to the Director that, due to minimal public access, a variance was acceptable with his department. (A copy of this letter was provided to the Board in the June 12, 2014 Board packet.) Mr. Costomiris also clarified that the area in question is not residential; it is an industrial area and Exelis either leases or owns most of the property around the area.

Dwayne Woolley asked if there was any chance that the road could be continued through and/or a new subdivision added at a later date. Mr. Costomiris stated that he does not anticipate that happening as this is an industrial area. If that does happen, the storage units will have been relocated or the operation will be relocated on the facility property. Mr. Woolley suggested that the approval be contingent on the road usage not changing.

Marc Franc stated that the Fire Marshal concurrence was based on the low traffic volume and the low public access. Mr. Costomiris agreed and stated that the concurrence was also based on the fire-suppressant systems that are located in both of the units.

Dennis Riding requested clarification on the permanent solution for this facility. Mr. Costomiris explained that ITT Exelis is working on funding to purchase a new unit and move the storage operations to meet the 50-foot rule within the year.

It was moved by Dennis Riding and seconded by Jeff Coombs and UNANIMOUSLY CARRIED to approve ITT Exelis request for a variance from hazardous waste storage requirements. This variance is approved contingent upon the current road usage/status not changing.

IX. Used Oil Section.

A. Approval of proposed Stipulation and Consent Order between the Board and Rock Canyon Oil (Board Action Item).

Deborah Ng, Manager, Recycling and Outreach Section, reviewed the proposed Stipulation and Consent Order (SCO) to resolve Notice of Violation (NOV) No. 1207008 issued to Rock Canyon Oil, LLC on November 30, 2012.

The NOV documents 19 violations: (1) Transferring used oil to rails cars at an unpermitted facility, (2) Operating an unpermitted used oil transfer facility, (3) Storing used oil without secondary containment, (4) Failure to track EPA ID numbers on rail shipments, (5) Failure to obtain receiving signatures for rail shipments, (6) Failure to track used oil as used oil, (7) Failure to track used oil shipment and delivery dates to Universal Lubricants, (8) Storing used oil in an unlabeled drum, (9) Storing used oil in a leaking drum, (10) Failure to provide secondary containment for the tank farm during operations, (11) Installing inadequately-sized pipe at the outflow to the process area, (12) Storing used oil drums and totes outside the secondary containment area, (13) Not receiving approval from the Director prior to modifying the facility, (14) Failure to submit an updated facility diagram, (15) Failure to lock facility gate while closed for business, (16) Operating process units at temperatures above permitted limits, (17) Operating processing units at unsafe temperatures, (18) Operating the facility in an unsafe manner by covering the fire suppression system sensor, (19) Failure to submit a written spill report within 15 days.

The violations have been resolved and the proposed SCO includes a penalty of \$69,250.00. Copies of the NOV, the proposed SCO and the penalty calculation sheets were included in the August 14, 2014 Board packet.

A 30 day public comment period began on July 14, 2014 and ended on August 12, 2014. No comments were received.

Board members noted that the violations documented at this facility are numerous and questioned if there are measures in place to follow up on the operation practices. Ms. Ng stated the facility has purchased a new TLC system to assist them in monitoring the temperatures.

Board members asked if the violations were discovered or self-reported. David Wheeler, Environmental Scientist, stated that the NOV documented violations from more than one inspection. A fire at the facility alerted the Division to some of the violations but there were problems prior to the fire that were being addressed.

Board members questioned if the facility was cooperative and willing to work through the many issues/violations that needed to be addressed. Ms. Ng stated the facility was cooperative. Board members asked how the Division was notified of the fire. Ms. Ng explained that Rock Canyon Oil notified the Division and the Fire Chief of American Fork of the fire.

It was moved by Dwayne Woolley and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order between the Board and Rock Canyon Oil.

X. Other Business.

Allan Moore reviewed the notice of public comment and public hearing regarding DEQ's Fiscal Year 2016 fee schedule. The public comment period will commence on August 25, 2014 and conclude on September 25, 2014. A public hearing will be held on September 25, 2014 in the DEQ Board Conference Room #1015. Additional information regarding this matter can be found on DEQ's website.

Dwayne Woolley asked if there are anticipated changes to the fees from last year. Mr. Moore stated the main change is the flat fee for hazardous wastes. Otherwise, the fees for the Division of Solid and Hazardous Waste and the Division of Environmental Response and Remediation will remain the same.

Depending on upcoming agenda items, the next meeting is scheduled for September 11, 2014. If this meeting is cancelled, Board members will be notified.

A Board meeting will be necessary for October. The October Board meeting will be held on October 9, 2014 at 1:30 p.m. in the DEQ Conference Room #1015.

XI. Adjourn.

The meeting adjourned at 2:30 p.m.