

July 12, 2016

Waste Management and Radiation Control Board  
195 N 1950 W  
PO Box 144880  
Salt Lake City, UT 84114-4880

Dear Board Members:

We are writing to urge you to not repeal R313-27, "Medical Use Advisory Committee." This rule was written by the former Utah Radiation Control Board, with the support of the Utah Attorney General's office, the previous Director of the DEQ, and as a compromise reached between Senator Margret Dayton and medical-users of radiation within Utah. It is our belief that not only was this rule written under the proper authority of the Radiation Control Board, but also there exists ongoing precedence in the DEQ and Administrative Rules for the Board to appoint a Medical Use Advisory Committee. Additionally, in light of the circumstances in which the rule was proposed, we believe that by repealing this rule the Board would betray the trust of those who relied on the word of the past Director of the DEQ and staff members who supported it as a compromise to their opposition to SB244 (2015).

The model for a rule requiring the Board to appoint a committee or council was not unique to the Radiation Control Board when it adopted R313-27. Other examples existing within the Administrative Rules provide precedence for this type of rule. When R313-27 was first written, the general idea of the content of the proposed rule was submitted to Laura Lockhart of the Attorney General's office. In the process of writing the language of the rule, she provided both suggested wording and cited precedence for a rule of this nature. One example in Administrative Rule of an ongoing precedence for the Board to appoint such a committee is R317-10-8, "Utah Wastewater Operator Certification Council". Note that several line items from R317-10-8 were used in drafting the language of R313-27. Thus, it can be shown that R313-27 is not unique within the DEQ's administrative rules, nor is it outside the established role of the Boards to appoint such a committee. If further evidence to this point is required, additional information could easily be found in the Radiation Control Board meetings minutes of that time when Ms. Lockhart provided advice in the public meetings supporting this approach and explain the precedence.

We would also like to remind the Board of the situation and environment from which R313-27 was proposed. As you are well aware, in 2015 Senator Margret Dayton sponsored SB244 which reorganized the Division of Solid and Hazardous Waste and the Division of Radiation Control into a single division and also reorganized the Boards which oversaw these divisions. A significant concern that was voiced by the previous Radiation Control Board and many members of the medical-use community, including the Utah Dental Association and the Utah Radiologic Society, was the lack of medical representation and expertise on the new Board. Based on this, and other objections, a significant number of individuals and professional organizations voiced their opposition to SB244. After much discussion, it was proposed that a Medical Use Advisory Committee be formed whenever an issue affecting the rules governing the medical use of radiation would be brought for Board action. Many individuals felt this compromise should be added to the amended Bill, but the Attorney General's Office, the DEQ Director, and staff members of both the DEQ and Senator Dayton assured the medical users that R313-27 would provide the same effect.

We've attached several documents in support of the points we've raised:

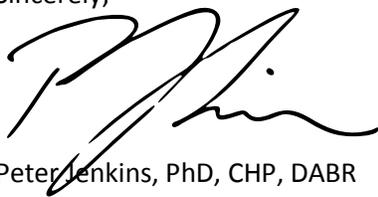
1. March 2, 2015 letter from the DEQ Director, Amanda Smith, stating support for the Medical Use Advisory Committee, citing one example of precedence for such a committee, and her intention to move forward with such a rulemaking action.
2. To remind Board member of the concerns raised by the medical users or radiation, we've also included the letter from the UDA opposing SB244 and the content of the letter provided by the President of the URS (we have since misplaced our copy of the signed letter, but believe the signed copy is available in the past Board minutes as well as in evidence for the SB244 Senate Hearing).
3. And, for convenience, R317-10-8, "Utah Wastewater Operator Certification Council" and R313-27, "Medical Use Advisory Committee"

We believe these documents illustrate the points we've raised, but have additional documents and email conversation chains that could be made available to provide additional evidence and context to the Board if it would be helpful.

Again, we urge you to retain R313-27. Not only was it appropriately written within the scope of the Radiation Control Board's authority, but it had wide support from the DEQ Director, Senator Dayton, and members of the medical-use committee. To repeal this rule so soon after it was adopted, and under the conditions it was adopted, would be a betrayal of the trust between the State and the individuals who accepted it as a compromise to their objections to SB244.

Thank you for your time and consideration of these points. We can make myself available to the Board if we could be of any assistance in providing further context to your consideration of retaining or repealing R313-27.

Sincerely,



Peter Jenkins, PhD, CHP, DABR

Po Box 782  
Kaysville, UT 84037



Ulrich Rassner, MD

548 E. North Hills Dr  
Salt Lake City, UT 84103

March 2, 2015

To Whom It May Concern:

In last week's hearing on SB 244, the Department of Environmental Quality became aware of questions and concerns within the Dental, Medical and Radiological communities concerning the potential lack of expertise to address rulemaking when there is potential for rules to affect the medical use of radiation.

Other Boards that work with the Department have addressed the need for special expertise through "Advisory Task Forces," or special groups that inform the rulemaking process. For example, our Solid & Hazardous Waste Control Board has an "Underground Storage Tank Advisory Task Force" consisting of interested Board members as well as stakeholders that represent a broad range of industry and non-industry specifically concerned with Underground Storage Tanks.

We believe that a similar "Medical-use Advisory Task Force," made up of medical practitioners from the areas most affected by rulemaking would help to provide the Board with the insight and expertise needed. In the event a rulemaking activity by the Board has the potential to affect the medical use of radiation, this "Medical-Use Advisory Task Force" could provide expertise, suggest rule language and/or recommend actions to the Board.

While the Board currently has the authority to create such a task force, the Department supports further action to formally create by rule a "Medical-use Advisory Task Force" under the proposed, "Waste Management and Radiation Control Board." We will move forward with this approach through rule, after July 1 when the changes from this legislation take place.

The Department confirms our commitment to maintaining a rulemaking process that is informed and that adequately addresses the issues that come before the Board with the necessary expertise.

Thank you for your commitment to working with us now, and in the future, as we make this process work as effectively as possible.

Sincerely,



Amanda Smith

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## Utah Dental Association

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February 25, 2015

### **Re: Regulatory Oversight of Radiation Use in Utah, SB 244**

Honorable Utah State Senators,

**Our association of 1600 dentists urges you to vote against SB 244** which would consolidate the Division of Radiation Control and the Division of Solid and Hazardous Waste into one Division of Waste Management. In our view SB 244 would diminish the input of experts in the field of radiation and would significantly impact many applications of radiation use in Utah.

We think:

- more analysis of this change is needed
- only one seat would be available for a physician or dentist
- a new Waste Division would not represent the distribution of use and dose radiation in Utah, nor acknowledge the differences in use
- a new Waste Division would not reflect understanding of the beneficial uses of radiation to medical patients for diagnoses and treatment
- SB 244 does not adequately address the unique nature of radiation use and hazards
- proper use of radiation requires oversight by highly specialized, properly credentialed professionals who are not found in waste management
- unique challenges arise from radiation uses that cannot be managed by a new Division focused on waste issues
- the proposals in SB 244 have not been discussed by the majority of radiation consumers

**We strongly recommend that Utah maintain a Division of Radiation Control separate from a Division of Solid and Hazardous Waste. At very least we think this issue should be studied longer and more thoroughly before voting on possible consolidation.**

Sincerely,

UDA Board of Directors

*Dr. James Bekker, Sandy*

*Dr. Glenn Zeh, Layton*

*Dr. Mark Cowley, Ogden*

*Dr. Val Radmall, Ogden*

*Dr. Gary Wiest, Provo*

*Dr. A. J. Smith, Murray*

*Dr. Brent Larson, Salt Lake*

*Dr. Jim Williamson, Murray*

*Dr. LaRisse Skene, S Jordan*

[Sender's Address]

[Date]

[Recipient's Address]

Subject: Regulatory Oversight of the use of Radiation within Utah

[Salutation]

[I/We] appreciate the opportunity to comment on the proposed language in SB244, which would consolidate the Department of Radiation Control and the Department of Solid and Hazardous Waste and their respective boards into one department of Waste Management with one accompanying board. This department and board would then also be tasked to administer the Radiation Control Act. The bill's emphasis centers on radioactive waste-related issues while minimizing other types of radiation use within the State, particularly in the field of the healing arts. More specifically, SB244 fails to recognize and to address the beneficial applications of radiation within diagnostic medicine, nuclear medicine, and radiation therapy in the organization of both the proposed Waste Division and Waste Board. If implemented, this bill would diminish the input of experts in the field of Radiation Control to the Department and have a significant impact on many applications of radiation use within the State, but has received little or no input from many of the affected parties and industries. Therefore, the legislature should delay a decision on SB244 and request an in-depth analysis to be completed on the full impact of the proposed legislation, while seeking input from all stakeholders across the full spectrum of radiation use.

Because the proposed organization of the Waste Division and Waste Board does not adequately reflect the use of radiation within the State, further analysis of unintended consequence is of utmost importance. Consider that at the end of 2014, there were 204 licenses issued allowing the use of radioactive materials. Of these, 46 were Medical Licenses while only 3 were related to waste disposal. Additionally, there are approximately 9,000 x-ray machines registered in the State of Utah; of those, approximately 90% are used in the practice of medicine. These x-ray machines are maintained in over 2,700 facilities 87% of which are used in medical practice, 6% in veterinary medicine and 7% in other industries. Although low level radioactive waste (LLRW) disposal and Uranium milling operations only account for only 3 radioactive materials licensees, they would occupy three permanent seats on the proposed Waste Board, compared to only one seat to be filled by an individual who is a medical doctor or dentist.

The proposed makeup of the Waste Division and Waste Board do not reflect the actual distribution of the use radiation and radiation dose on the population of the State and does not adequately acknowledge the differences in use. While a LLRW facility must

limit the dose to a member of the public to 25 mrem in a year; a medical licensee may deliver up to 100 mrem in special circumstances 500 mrem in a year to non-patients. A thorough understanding of these issues, rather than simply considering radiation from all sources in the same manner from a regulatory perspective, is insufficient to effectively address radiation issues within Utah.

The proposed organization of the board does not reflect understanding of the beneficial uses of radiation to medical patients, in the form of medical diagnoses and treatment of disease, because the Waste Board would be mainly comprised of individuals whose main qualifications and focus is on waste products. SB244 requires that “a member of the board shall: (a) be knowledgeable about solid and hazardous waste matters as evidenced by a professional degree, a professional accreditation, or documented experience” (19-6-103(2)). Yet, no such expertise is required in the area of radiation protection of patients nor is training and experience required in any of the other areas of radiation and radioactive material uses save for the single representative member proposed with a background in public health.

Furthermore, the proposed legislation does not adequately address the unique nature of radiation use and hazard within Utah. While the Divisions of Air Quality, Drinking Water, and Environmental Response would be maintained under the proposed legislation, Radiation Control and Solid and Hazardous Waste are folded into a single Division. While it is true that there are elements of radioactive waste disposal that are shared in common with other forms of solid and hazardous waste, this is not true for the vast majority of radiation use within the State. Proper use of radiation requires the involvement of highly specialized and properly credentialed professionals. The challenges posed by the different uses of radiation are too great to imagine that individuals focused on waste disposal could adequately address these disparate concerns.

It has been suggested that the regulatory organization in Colorado similarly places the regulation of radiation issues within their Hazardous Material and Waste Management Division. However, even though the Division also oversees waste issues, Colorado has recognized the importance of radiation issues and the unique nature of radiation concerns and maintains a Radiation Advisory Committee. The Committee consists of nine members equally represented from the areas of healing arts, higher education, and industry. At a minimum, Utah should similarly recognize the unique challenges posed by radiation uses and not expect to be able to successfully manage all types of radiation use from a board and division focused on waste issues.

Finally, many of the proposals made in SB244 have been made in the absence of input from the majority of radiation consumers in Utah. Not only does the proposed legislation not reflect the varying interests of the different uses, but also is a disservice to the people of Utah by only addressing the waste aspects of radiation use. Based on the current wording of SB244, it would appear that only one type of radiation use was

considered in forming the proposed bill. Some regulated industries may look on these conditions in a positive manner by expecting a lower level of regulatory oversight, but in the case of the highly regulated areas of the Medical Use of Radiation, the likelihood of improper regulation can have a devastating impact on not only the radioactive materials licensees and x-ray machine registrants, but on the patients these regulated users seek to help. The legislature should reconsider the changes proposed in SB244 after proper input, rather than through rushed legislation that will significantly alter state law with unintended consequences.

Radiation does have many beneficial uses. Used in medical diagnosis radiation therapy for the treatment of diseases, radiation saves lives and significantly improves the quality of life of patients in Utah. The implied message that medical uses of radiation are insignificant enough to permit their oversight by individuals with no medical training or experience degrades the professional practice of thousands of medical professionals in Utah. Permanent membership for the Radiation Control Board should represent all users of radiation within the State including medical physicists, radiologists and radiation oncologists. Additional membership should reflect the number and types of radiation use.

Until these fundamental issues are expertly examined in greater detail, we strongly recommend that Utah maintain a separate Division of Radiation Control and that the Radiation Control Board remain separate from the Solid and Hazardous Waste Board. We appreciate all efforts to ensure that Utah is governed in the most effective and beneficial manner for the residents of this state and we look forward to working together on a collaborative solution to the many challenges ahead.

Sincerely,

[Name, signature]

**R317-10-8. Utah Wastewater Operator Certification Council.**

A. Membership.

1. Members of the council shall be appointed by the board.

a. Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, the Rural Water Association of Utah, and the Civil and Environmental Engineering Departments of universities in Utah.

b. The council shall serve at the discretion of the board to oversee the certification program in an advisory capacity to the director as provided in this rule.

2. The council shall consist of seven voting members and should include representation from interest groups as follows:

a. four members who are operators holding valid certificates, with at least two members being wastewater collection system operators and two members being wastewater treatment system operators;

b. one member with at least three years of management experience in either wastewater treatment, collection, or both, who represents municipal wastewater management;

c. two members who are at large and may represent:

(1) an educational institution in Utah;

(2) those who are currently certified as wastewater operators in the private sector; or

(3) vocational training.

3. At least two non-voting division staff should be in attendance at any council meeting.

4. Voting council members shall serve as follows:

a. terms of office shall be for three years with two members retiring each year, except for the third year when three shall retire;

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

c. appointments to succeed a council member who is unable to serve his full term shall be for the remainder of the unexpired term; and

d. council members may be reappointed, but they do not automatically succeed themselves.

5. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

6. Each year the Council shall elect from its membership a Chair and Vice Chair.

B. Duties of the council shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of

individual exam databank items;

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval;

3. assisting in administering examinations at various locations;

4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director;

5. providing advice and recommendations for CEU approval; and

6. preparing an annual report of certification program activities for distribution to the board and other interested parties.

**KEY: water pollution, operator certification, wastewater treatment, renewals**

**Date of Enactment or Last Substantive Amendment: April 29, 2015**

**Notice of Continuation: July 11, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-5**

**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**

**R313-27. Medical Use Advisory Committee.**

**R313-27-1. Formation and Role of Medical Use Advisory Committee.**

(1) The board shall appoint a Medical Use Advisory Committee to review and make recommendations prior to a board action for any rule or other policy matter that affects the medical use of radiation. Committee members shall be appointed after considering recommendations from affected groups or individuals.

(2) The Medical Use Advisory Committee shall consist of at least three members, with the majority of members from an area of medical use affected by the rulemaking action.

(3) Members may include non-physician professionals if the member's professional credentials are applicable to the scope of the matter being considered.

(4) Members may include board members.

(5) The Medical Use Advisory Committee shall, by majority vote, provide recommendations and, as appropriate, suggested rule language to the board. Minority recommendations and suggested rule language, if any, shall also be provided to the board.

(6) This rule shall not apply to emergency rulemaking under Section 63G-3-304.

**KEY: medical use advisory committee, medical use of radiation**  
**Date of Enactment or Last Substantive Amendment: July 9, 2015**  
**Authorizing, and Implemented or Interpreted Law: 19-3-103.5;**  
**19-3-104(4)**