

Waste Management and Radiation Control Board Meeting  
Utah Department of Environmental Quality  
195 North 1950 West (Conference Room #1015) SLC, Utah  
April 13, 2017  
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice Chair), Richard Codell, Danielle Endres, Mark Franc, Jeremy Hawk, Steve McIff, Nathan Rich, Vern Rogers and Shane Whitney

Board Members Absent: Alan Matheson and Shawn Milne

Staff Members Present: Scott Anderson, Brent Everett, Eric Baiden, Thomas Ball, Carlee Christoffersen, Therron Blatter, Christina Gardiner, Allan Moore, Bret Randall, Arlene Lovato, Rusty Lundberg, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Doug Taylor and Raymond Wixom

Others Present: Donna Sackett, Ashley Soltysiak, Linda Ebert and Dan Shrum

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Shawn Milne was excused from the meeting.

Introduction of Tom Ball, Planning and Technical Support Section Manager.

Scott Anderson introduced Tom Ball. Mr. Ball is replacing Ralph Bohn, who recently retired, as the Manager for the Planning and Technical Support Section. Mr. Ball has worked for many years in the Division's hazardous waste programs.

II. Approval of Meeting Minutes for the February 9, 2017 Board Meeting (**Board Action Item**).

**It was moved by Nathan Rich and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the February 9, 2017 Board meeting minutes.**

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation, informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of February 2017 was \$15,660,762.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of March 2017 is \$15,045,100.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. The balance is watched closely and fluctuates based on the number of claims received and the cost of claims paid. There were no questions or comments on the PST Trust Fund balance update.

IV. Administrative Rules.

A. Solid Waste Rules: Approval to proceed with formal rulemaking and public comment to remove R315-302-1(2)(a)(iii) from the rules. This provision prohibits a new solid waste facility from being located within certain farmland classified by the U.S. Dept. of Agriculture. (**Board Action Item**)

Allan Moore, Solid Waste Section Manager, reviewed the request for the Board to approve for publication in the Utah State Bulletin and commencement of a 30-day public comment, the proposed change to the Solid Waste Management and Permitting Rules that removes paragraph R315-302-1(2)(a)(iii).

Paragraph R315-302-1(2)(a)(iii) establishes a location standard for farmland classified or evaluated as prime, unique or of statewide importance. The Division recommends removing this language because it is a standard overseen by the U.S. Department of Agriculture under the Farmland Protection Policy Act (FPPA) and is essentially outside the regulatory purview of the Division. The FPPA was designed, in part, to ensure federal programs are compatible with state and local farmland protection programs. (A copy of the proposed change to Rule R315-302-1 was included in the April 13, 2017 Board packet.)

Scott Anderson clarified that this rule is not in the Federal Solid Waste Rules. This rule is unique to Utah and eliminating this rule from the State Solid Waste Rules does not in any way affect the Federal Solid Waste Program or Utah's primacy or authorization.

Allan Moore stated that he does not believe this change will cause an influx of new applications as several other siting criteria must still be met.

Brett Mickelson declared a conflict of interest in this matter.

Nathan Rich commented that removing this restriction will not lessen the protections that are currently in place under all the other landfill siting criteria.

**It was moved by Steve McIff and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approve for formal rulemaking and 30-day public comment period the removal of paragraph R315-302-1(2)(a)(iii) that prohibits a new solid waste facility from being located within certain farmland classified by the U.S. Dept. of Agriculture, with a publication date in the Utah State Bulletin on May 1, 2017.**

- B. Solid and Hazardous Waste Rules: Approval to proceed with formal rulemaking and public comment to incorporate EPA's hazardous waste generator improvement rule (promulgated on 11/28/2016, 81 FR 85732) into R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, R315-273, R315-301, R315-304-3 and R315-305-3. **(Board Action Item)**

Rusty Lundberg, Deputy Director, Division of Waste Management and Radiation Control and Deborah Ng, Hazardous Waste Section Manager, reviewed the request for the Board to approve for publication in the Utah State Bulletin and commencement of a 30-day public comment, the proposed change to the following state hazardous and solid waste rules, R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, R315-273, R315-301, R315-304, and R315-305, to incorporate EPA's hazardous waste generator improvement rule, as promulgated in the Federal Register on November 28, 2016 (81 FR 85732) and to make selected corrections and clarifications.

On November 28, 2016, the U.S. EPA published in the Federal Register a final rule that makes significant changes to the hazardous waste generator regulations. This final rule is known as the Hazardous Waste Generator Improvement Rule. In order to maintain regulatory equivalency, Utah is required to incorporate this federal rule into the state solid and hazardous waste rules. Consequently, proposed changes to the rules listed above are necessary.

Mr. Lundberg clarified that this rule is EPA's attempt to stream line and make the rules easier to follow. The primary changes include changing the categories of a generator. The current categories are: Large, Small, and Conditionally Exempt. The Conditionally Exempt category will be replaced with a "Very Small Quantity Generator" category. Doing this helps to remove some misunderstanding that has occurred over the years as to what "Conditionally Exempt" really means and what is required.

Also included in this rulemaking is a proposed change in the used oil rules (R315-15-13) that will allow transit systems (e.g., UTA) to transport their own used oil, under a permit-by-rule status, to a permitted used oil recycler. This rule change will result in saving the cost of outsourcing the transportation of used oil by a permitted transporter in an equally protective and safe manner.

(A copy of the proposed changes were included in the April 13, 2017 Board packet.)

Ms. Ng stated that during the education outreach presentations, attendees have been informed of the proposed changes to the rules that will be taking place and where to find further information, etc. The US EPA has also done many scoping/comment meetings also for all generators (most of the outreach has been done at a federal level).

**It was moved by Dennis Riding and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve formal rulemaking and 30-day public comment period to incorporate EPA's hazardous waste generator improvement rule (promulgated on 11/28/2016, 81 FR 85732) into R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, R315-273, R315-301, R315-304-3, and R315-305-3, with a publication date in the Utah State Bulletin on May 15, 2017.**

#### V. Director's Report/Legislative Update.

Scott Anderson provided an update on legislation from the 2017 General Session of the Legislature that impacts the Division of Waste Management and Radiation Control.

SCR003, sponsored by Senator Hinkins, is a resolution requesting the Department of Energy (DOE) to adequately fund the Uranium Mill Tailings Remedial Action Project at Atlas Minerals in Moab, Utah. This bill passed.

HB115, sponsored by Representative McKell, changes the way the solid waste fees are determined and assessed. Currently, fees from the disposal of solid waste are paid by a certain number of facilities and fund the solid waste program. This bill will increase the number of facilities who will be subject to the fees. The bill directs the agency to establish a fair and equitable fee to cover program costs. It moves the fee from a statutory provision to the fee schedule that the DEQ puts together every year as part of its budget request. Having the fees in the fee schedule allows a little more flexibility to address changes in program costs. This bill also eliminated the restriction on the amount of state-only hazardous waste from other states that can be managed at solid waste disposal facilities in Utah (from SB 268, Knudsen). This bill passed.

HB272, sponsored by Representative Wilson, requires agencies to do a quantitative analysis of the regulatory impacts on businesses and residents before submitting any new administrative rules. This bill passed.

SB79, sponsored by Senator Stuart Adams, addresses compatibility concerns raised by the Nuclear Regulatory Commission (NRC) regarding financial assurance for low-level radioactive waste management facilities (*EnergySolutions*). This bill will correct issues that NRC identified. This bill passed.

HB33, sponsored by Representative Perry, extends the sunset date for the Mercury Switch Removal Act. This act has been reauthorized for ten more years. This bill passed.

HB296, sponsored by Representative Wilson, modifies financial assurance requirements for perpetual care at radioactive waste disposal facilities. This bill removes the requirement for the adequacy report for commercial hazardous waste and radioactive waste management facilities, unless triggered by certain criteria. This bill also eliminates the annual 400K payment by EnergySolutions into the perpetual care fund and provides more investment options for the State Treasurer for investing the current balance of the fund and provides a target for him to reach in the year 2141. This bill passed.

SB 244, sponsored by Senator Iwamoto, creates a recycling promotion and education program regarding plastic bags and imposes a fee on single use bags at the point of sale. This is the second attempt to pass such a bill. This bill failed.

## VI. Open and Public Meetings Act, Utah Public Officers and Employees Ethics Act.

Raymond Wixom, Attorney General's Office, informed the Board that the Open and Public Meetings Act requires that Board members receive annual training on the requirements of the Act. Mr. Wixom reviewed the requirements of the Open and Public Meeting Act. The purpose and intent of the Open and Public Meetings Act is to ensure that the actions of the State are conducted openly and that the Board's business is done in full view of the public. Mr. Wixom stated that Scott Anderson, Director of the Division of Waste Management and Radiation Control and his staff ensure that the definitions and requirements of the Open and Public Meetings Act are carried out.

Recent amendments (S.B. 97) to the Open Public Meetings Act relating to minutes of open meetings were passed. This bill provides that the requirement to include in minutes the substance of certain matters addressed at the meeting is met by publicly available online minutes that provide a link to the meeting recording. The Board will be informed if any changes are implemented regarding this amendment.

Mr. Wixom reviewed the requirements of the Ethics Act.

Mr. Wixom clarified that under the Utah Constitution and Statute, the Attorney General and his Assistant Attorney's General represent the State of Utah and its agencies. These attorneys represent the DEQ and the Director of the Division of Waste Management and Radiation Control in their official capacity, not in their individual capacity. Mr. Wixom stated that he cannot or will not ever act as the Board members, Division Director's or staff member's personal attorney on any subject.

## VII. Other Business.

### A. Misc. Information Items.

Scott Anderson informed the Board that along with many stakeholders, owners/operators of solid waste landfills and solid waste management facilities, they should have received a letter inviting them to participate in stake holder meetings to discuss revisions to the solid waste fees. The letter included a schedule of meetings.

HB 115, Solid Waste Revisions, requires the Department of Environmental Quality (DEQ) to revise the existing fees associated with the management of solid waste within the state. The Division is holding meetings throughout the state to receive input from those impacted and to get ideas on how to look at the

fees. The Division will be presenting information relative to constraints and costs, as well as the statutory directives mandated relative to this fee. Board members were encouraged to attend a meeting.

B. Scheduling of next Board meeting.

The next Board meeting is scheduled for May 11, 2017 at 1:30 p.m. at the Utah Department of Environmental Quality, 195 North 1950 West, Salt Lake City, Utah.

VIII. Election of Board Chair and Vice Chair.

Mr. Mickelson informed the Board that each year a board chairman and vice-chairman must be elected. Mr. Mickelson then conducted the election.

**Steve McIff nominated Brett Mickelson to continue to serve as the Board Chairman, Nathan Rich seconded the nomination. It was UNANIMOUSLY CARRIED that Brett Mickelson continue to serve as the Board Chairman.**

**Shane Whitney nominated Dennis Riding to continue to serve as the Board Vice-Chairman, Steve McIff seconded the nomination. It was UNANIMOUSLY CARRIED that Dennis Riding continue to serve as the Board Vice-Chairman.**

IX. Adjourn.

The meeting adjourned at 2:20 p.m.