

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
July 12, 2018
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Marc Franc Alan Matheson, Steve McIff, Nathan Rich, Vern Rogers and Shane Whitney

Board Members Absent: Richard Codell, Danielle Endres, Jeremy Hawk and Shawn Milne

Staff Members Present: Scott Anderson, Brent Everett, Thomas Ball, Therron Blatter, Tim Butler, Gwyn Galloway, Arlene Lovato, Rusty Lundberg, Kacie McNeil, Deborah Ng, Bret Randall, Elisa Smith, Don Verbica, Raymond Wixom

Others Present: Linda Tibrect, Mario Bettolo, Tim Orton, Dwayne Woolley

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Jeremy Hawk and Shawn Milne were excused from the meeting. Dwayne Woolley, former Board member, was recognized.

II. Approval of the Meeting Minutes for the May 10, 2018 Board meeting (Board Action Item).

It was moved by Shane Whitney and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the May 10, 2018 Board Meeting minutes.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation, informed the Board that the asset balance of the Petroleum Storage Tank (PST) Trust Fund at the end of May 2018 was \$13,882,024.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of June 2018 is \$13,606,168.00. The PST Trust Fund is managed on a cash balance basis and is watched closely to ensure sufficient coverage for covered releases.

IV. Administrative Rules.

A. Approval of final adoption of changes to Radiation Control Rules R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials, to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (Board Action Item).

Rusty Lundberg, Deputy Director of the Division of Waste Management and Radiation, reviewed the request for the Board to approve for final adoption changes to R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, of the radiation control rules to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (NRC) and published in the Federal Register on September 30, 2014 (79 FR 58664) and August 3, 2015 (80 FR 45841).

At the April 12, 2018 Board meeting, the Board approved the proposed changes to R313-37 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin.

The proposed changes were published in the May 1, 2018 issue of the Bulletin (Vol. 2018, No. 9). The pertinent pages of this issue of the *Bulletin* were provided in the July 12, 2018 Board packet.

A public comment period began on May 1, 2018 and concluded on June 1, 2018. No comments were received by the Division.

On September 30, 2014, the NRC amended the federal radioactive materials regulations to address security-related information requirements for large irradiators and manufacturers, distributors, transporters of category 1 and category 2 quantities of radioactive materials. On August 3, 2015, the NRC made various technical corrections to the federal radioactive materials regulations, including a correction to a reference in the federal regulations for the physical protection of category 1 and category 2 quantities of radioactive materials. However, based on the compatibility designations, the majority of NRC's revisions are not required for Utah, as an Agreement State, to adopt. Because R313-37 incorporates by reference 10 CFR Part 37, updating the date of the incorporation by reference from 2014 to 2017 results in incorporating the changes published by the NRC on September 30, 2014 and August 3, 2015. Consequently, only the change to the date of the incorporation by reference in R313-37-3 is necessary in order to maintain regulatory compatibility with NRC rules as an Agreement State with the NRC.

The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain primacy of the radioactive materials program from the federal government and under Subsection 19-6-104(1) to make rules necessary to implement the Radiation Control Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.

The Board's approval is needed for final adoption of the rule changes to R313-37, as published in the May 1, 2018 issue of the Utah State Bulletin and to set an effective date of July 13, 2018. The Director recommended that the Board approve final adoption of the rule change to R313-37, as published in the May 1, 2018 issue of the Utah State Bulletin and set an effective date of July 13, 2018.

It was moved by Vern Rogers and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve for final adoption rule changes to Radiation Control Rules R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials, to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission, as published in the May 1, 2018 issue of the Utah State Bulletin with an effective date of July 13, 2018.

B. Approval to proceed with formal rulemaking and public comment on proposed changes to the Used Oil Rules R315-15-16, Grants, to provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes (Board Action Item).

Rusty Lundberg and Deborah Ng, Hazardous Waste Section Manager, reviewed the request for the Board to initiate formal rulemaking and receive public comment on proposed changes to R315-15-16, Grants, of the Used Oil Rules.

Section R315-15-16 implements the provisions of Section 19-6-720 of the Used Oil Management Act regarding used oil grants that are used for establishing and supporting do-it-yourselfer (DIYer) used oil collection centers. The proposed changes to the used oil grant section provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes. The proposed changes result in greater alignment between the rules and the actual grant application package and implementation procedures and process.

Additionally, in January, 2018, the Division provided the Legislature's Administrative Rules Review Committee with a draft of the proposed changes in response to the Committee's action that rulemaking be undertaken to fully address the used oil grant application and reimbursement processes for DIYer used oil

collection centers. In Subsection 16.1, the list of authorized uses of the grant funds is expanded to match the list in 19-6-720 of the Used Oil Management Act.

The following ten, new subsections are proposed to be added: 16.4 Used Oil Transportation Costs from Used Oil Collection Centers – specifies the requirements to qualify for reimbursement of transportation costs from certain DIYer used oil collection centers from rural locations; 16.5 Funding – matching funds from grant applicants are not required, stipulates certain grant funding actions by the Director, requires submittal of bids to be paid by grant; 16.6 Application Contents – describes the content of the grant application form; 16.7 Application Submission –requires submittal of an original grant application to the Director; 16.8 Audit Requirements – grant recipients may be subject to a desk or field audit, requires grant recipient to maintain records and documents associated with grant expenditures; 16.9 Administrative Procedures – requires submittal of a final report and identifies the report contents; 16.10 Failure to Comply – describes actions the Director may take if the grantee fails to comply with grant agreement; 16.11 Grant Payments – specifies grant payment submittals and procedures; 16.12 Release of Funds – specifies Director actions to approve grant payments and forward to the Division of Finance; and 16.13 Grant Closeout – specifies requirements for grant closeout by the Director and for grantee record retention and availability.

The summary, the Draft rule analysis form and the Proposed rule changes to R315-15-16 were provided in the Board’s July 12, 2018 Board packet.

The Board is authorized under Subsection 19-6-704 to make rules necessary to implement the Used Oil Management Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.

Board action is required to publish the proposed rule changes in the Utah State Bulletin and start a 30-day public comment period. The Director recommended that the Board authorize the publication of the proposed used oil rule changes in the Utah State Bulletin and commence a 30-day public comment period. With the Board’s approval, it is anticipated that the proposed rule changes will be published in the August 1, 2018 issue of the Utah State Bulletin with the public comment period beginning on August 1, 2018 and ending on August 31, 2018.

Dennis Riding asked if the grant application process has changed since its inception. Ms. Ng stated that the number of applicants increased as oil prices went down. At that time, the smaller used oil collection centers sought grant money for transportation costs.

Nathan Rich asked if the new rules being proposed have any additional requirements, specifically in terms of review and fund disbursements. Ms. Ng explained that the change only clarifies how used oil collection centers can get their transportation costs reimbursed.

Mr. Lundberg further clarified that this rule change is to help subsidize the rural areas that have used oil collection centers to transport their oil to the recycling centers to complete the process, etc. This rule addresses the need for the reimbursement grants to help the rural areas of the state to not only collect used oil but move it to recycling facilities.

It was moved by Mark Franc and seconded by Steve McIff and UNANIMOUSLY CARRIED to approval to proceed with formal rulemaking and public comment on proposed changes to the Used Oil Rules R315-15-16, Grants.

- C. Approval to proceed with formal rulemaking and public comment on proposed changes to the Hazardous Waste Rules R315-260, Hazardous Waste Management System, and R315-261, General Requirements – Identification and Listing of Hazardous Waste, to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664) (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager, reviewed the request for the Board to approve to proceed with formal rulemaking and public comment by filing with the Office of Administrative Rules and publishing in the Utah State Bulletin proposed changes to UAC R315-260 and R315-261 to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664).

In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The Board adopted these rules in January of 2016. The federal rules were challenged in court and the United States Court of Appeals for the District of Columbia Circuit issued orders on July 7, 2017 and March 6, 2018 vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. The proposed changes to UAC R315-260 and R315-261 were provided in the July 12, 2018 Board packet.

The Board is authorized under Subsection 19-6-105(1)(c) to make rules governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage and disposal facilities. The Board is authorized under Subsection 19-6-104(3)(d) to meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste. The rule changes also meet existing DEQ and state rulemaking procedures.

The Director recommended the Board approve for formal rulemaking and public comment by publishing in the August 1, 2018 *Utah State Bulletin* the proposed changes to UAC R315-260 and R315-261. The 30-day public comment period will begin on August 1, 2018 and end on August 30, 2018.

It was moved by Steve McIff and seconded by Nathan Rich and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and public comment on proposed changes to the Hazardous Waste Rules R315-260, Hazardous Waste Management System, and R315-261, General Requirements – Identification and Listing of Hazardous Waste, to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664).

V. Radioactive Materials.

- A. Approval of the University of Utah (Radioactive Materials License Number UT 1800001) exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b) (Board Action Item).

Gwyn Galloway, Environmental Scientist, UMILL/RAM Section, reviewed the request from the University of Utah (U of U) for an exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b) of the Utah Administrative Code.

In 1993, the U of U wrote to the U.S. Department of Transportation (DOT) requesting an exemption from DOT requirements to move a device containing radioactive materials from one building on campus to another campus building. The DOT responded that hazardous materials transported by a state agency which are packaged and handled solely by state employees and transported in state owned and operated vehicles were not considered to be in commerce and were therefore excepted from the Hazardous Materials Transportation Act and the Hazardous Materials Regulations [DOT Requirements] developed under the Act. Therefore, the U of U did not need an exemption to transport the radioactive material as requested. This DOT interpretation of 49 CFR 171.1(d)(5) has been applied by university personnel at various universities across the nation for a number of years.

On June 1, 2018, the U.S. Nuclear Regulatory Commission (NRC) sent a communication to the Agreement States to clarify the applicability of the DOT requirements found in Title 49 of the Code of Federal Regulations (CFR) to the transportation of radioactive materials and when licensees would need to request an exemption from the NRC's transportation requirements found in 10 CFR Part 71. (A copy of the June 1, 2018 letter from the NRC was provided in the July 12, 2018 Board packet.)

The communication explained that, during an inspection at a State university, an inspector was informed by university personnel that the DOT requirements did not apply to the transportation of radioactive materials as described above since the materials were not considered to be "in commerce" and were excepted by 49CFR 171.1(d)(5). Under the NRC's authority, the requirements of 10 CFR 71.5(b) were promulgated to ensure that licensees transporting radioactive materials comply with the applicable portions of DOT regulations even when those shipments do not enter into commerce and therefore are not subject to DOT requirements. Pursuant to 10 CFR 71.5(b), all radioactive materials transported by State personnel in State owned and operated vehicles would be required to comply with the DOT requirements even though the radioactive materials are not considered to be in commerce. All Agreement States are required to adopt and implement requirements that are essentially identical to the requirements found in 10 CFR 71.5(b) in order to maintain compatibility with NRC Program requirements. The State of Utah adopted requirements that are essentially identical to 10 CFR 71.5(b) in Utah Administrative Code (UAC) R313-19-100(5)(b).

When the Radiation Safety Officer (RSO) at the U of U read the June 1, 2018 communication from the NRC, he realized that the U of U had been following the DOT's interpretation and were treating shipments that were not in commerce as excepted from the requirements, but they did not have an exemption to 10 CFR 71.5(b) or Utah's equivalent requirement, UAC R313-19-100(5)(b).

The U of U's RSO immediately contacted the Division to verify that he had correctly interpreted the communication. When the Division agreed that the RSO had correctly determined that the U of U was operating in accordance with DOT requirements but not with the requirements of the NRC, the RSO sent a request to the Director for an exemption to the requirements in 10 CFR 71.5(b) [R313-19-100(5)(b)]. (A copy of the U of U letter dated Jun 14, 2018, requesting an exemption from R313-19-100(5)(b) was provided in the July 12, 2018 Board packet.)

As discussed with the RSO, the exemption would only apply to the radioactive materials which are packaged and handled solely by state employees and transported in state owned and operated vehicles and are not considered to be in commerce. Specifically, this exemption would apply only to on-campus transportation.

The Director recommends that the Board approve this exemption because it will typically apply to only very small quantities of radioactive materials that are transported by U of U personnel in State owned and operated vehicles on local roadways and poses no undue hazard to the public or the environment.

Dennis Riding asked if other universities in other states have the same issue and how have they been resolved. Ms. Galloway stated that other universities within the state may have the same issue. However, they have not asked for an exemption. This issue was initially discovered in another state and it is anticipated that it was handled through an exemption request as well.

Nathan Rich asked if this is a blanket exemption or are there some limits or restrictions. Ms. Galloway stated the exemption could be written to identify any/all restrictions the Board desires.

Mark Franc stated that the information provided with the exemption request referred to "typical" small quantities but did not address atypical situations of increased hazard such as a traffic accident or material falling off the truck in transit. Mr. Franc also asked if there would be a way for the general public to know of the hazards associated the material if an incident were to occur.

Mario Bettolo, representing the University of Utah, explained that this exemption would only apply to material that is not in commerce. Specifically, this exemption would be for moving material from a small research lab on campus to the waste building. The material will be double-bagged, tagged and transported approximately a half a mile. If material is shipped off campus or is going to other locations, the DOT rules would be implemented.

Mr. Franc asked if this exemption would apply to anything other than small quantities. Mr. Bettolo stated this exemption is for only small quantities and he would not object to having the word “typically” removed from the exemption request.

Shane Whitney requested clarification on how the material will be transported on campus. Mr. Bettolo explained that a waste truck is utilized to transport the materials and is only used on campus. Mr. Bettolo clarified the U of U did not receive an exemption in 1993; it received a letter from the DOT indicating their practices were acceptable to the DOT.

Mr. Rich asked what requirements the U of U would be subject to if this exemption was not in place. Ms. Galloway stated the U of U would be subject to the requirements of R313-19 100(5) regarding packaging, labeling, marking, etc. Mr. Bettolo stated the time to package, label and mark the material would be significant (adding hours to each shipment) if this exemption was not granted. Without the exemption, the U of U would be required to package all the material as if it were shipping the material out of state rather than transporting it to the waste building where it is re-packaged, sorted and labeled.

It was moved by Dennis Riding and seconded by Vern Rogers and unanimously carried to approve the University of Utah’s (Radioactive Materials License Number UT 1800001) exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b); Motion was amended to include removing the word “typically” and limiting it to the University of Utah campus only.

VI. Low-Level Radioactive Waste.

- A. EnergySolutions’ request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to treat waste contaminated with dioxins and furans by macroencapsulation rather than by chemical means (Information Item Only).

Don Verbica, Low-Level Radioactive Waste Section Manager, reviewed EnergySolutions’ request submitted on June 27, 2018, for a one-time site-specific treatment variance from the Utah Administrative Code (Hazardous Waste Management Rules).

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on July 10, 2018. The comment period began July 10, 2018, and was scheduled to end August 8, 2018. Due to an error, a corrected notice of public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on July 17, 2018. The comment period began July 17, 2018 and ended on August 16, 2018. No comments were received.

Tim Orton, from EnergySolutions, explained the company’s proposal to receive up to 100 tons of ash contaminated with metals at varying levels with dioxins and furans as underlying hazardous constituents. If, upon receipt, this waste meets land disposal restrictions for characteristic metals, the waste may be directly disposed in the low-level radioactive waste embankment regardless of dioxin and furan concentrations. However, if the facility is required to treat the waste for metals to meet the land disposal restrictions for characteristic metals, then it is also required to treat the dioxins and furans as underlying hazardous constituents. EnergySolutions proposes to receive this waste and treat it to meet land disposal restriction standards for the hazardous metals, if necessary.

EnergySolutions is asking to be relieved of the requirement for treating the dioxins and furans. In order to ensure that this treatment is protective to the environment, EnergySolutions proposes to macroencapsulate the waste for disposal in the mixed waste landfill cell.

This request is based on the fact that treatment of the dioxin and furan contaminants is contingent only upon the hazardous metal levels. The proposed treatment will include further encapsulating the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching.

Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268.44 of the Utah Administrative Code. The variance will be valid for one year only.

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

VII. Director's Report.

Scott Anderson provided a Director's report (attached). On behalf of the Division, Mr. Anderson expressed appreciation to the Board for its support of the Division's rulemaking activities. Rulemaking is important to the Division in the waste program as it helps maintain primacy and in the radiation control program as it helps maintains agreement state status.

VIII. Other Business.

- A. Misc. Information Items. – None to report.
- B. Scheduling of next Board meeting.

The August 9, 2018 Board meeting was canceled. The next Board meeting is scheduled for September 13, 2018 at 1:30 pm at the Utah Department of Environmental Quality, 195 North 1950 West, (Conference Room #1015), SLC, Utah.

IX. Adjourn.

The meeting adjourned at 2:15 p.m.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Director's Report

July 12, 2018

1. HB 373
 - a. Effective July 1, 2018
 - b. Technology options being evaluated.
 - c. Self-inspection rules drafted.
 - d. Anticipate rulemaking September 2018.

2. Solid Waste fees.
 - a. New fee approved in 2018 General Session (21 cents/ton for treatment, disposal, 11 cents/ton for transfer).
 - b. Current fee (and those paying) remains in place through December 2018.
 - c. New fee effective January 1, 2019.
 - d. Fee for FY 2020 budget developed July/August 2018.

3. Sunset Reviews
 - a. Used Oil Management Act.
 - b. Solid and Hazardous Waste Act.