

Waste Management and Radiation Control Board Meeting
Emergency Electronic/Telephonic Meeting
Anchor Location: Utah Department of Environmental Quality
195 North 1950 West (Red Rocks Conference Room #3132), SLC
August 30, 2018
10:00 a.m.

Board Members

Participating By Phone: Richard Codell, Danielle Endres, Mark Franc, Alan Matheson, Shawn Milne, Nathan Rich, and Dennis Riding (Vice-Chair)

Board Members Present at Anchor Location:

Brett Mickelson (Chair), Vern Rogers and Shane Whitney

Board Members

Excused/Absent: Jeremy Hawk and Steve McIff

Staff Members Present:

Scott Anderson, Brent Everett, Thomas Ball, Eric Boone, Jule Fausto, Arlene Lovato, Rusty Lundberg, Deborah Ng, Christine Osborne, Don Verbica, Otis Willoughby, Raymond Wixom

Other Phone Call

Participants: None

Others Present at

Anchor Location: Jeff Havlicak, Grace Olscamp, Frank Pignanelli, Jessica Reimer, Mark Walker

I. Call to Order.

Brett Mickelson (Chair) called the meeting to order at 10:00 a.m.; roll call was conducted (see above).

II. Request from EnergySolutions for an exemption from R313-25-9(5) of the Utah Administrative Code (Board Action Item).

Scott Anderson reviewed the request from EnergySolutions for an exemption from R313-25-9(5)(a) of the Utah Administrative Code (UAC). The letter from EnergySolutions requesting the exemption was previously provided to the Board in an email on August 28, 2018.

UAC R313-25-9(5)(a) limits the amount of depleted uranium that EnergySolutions can receive to one metric ton total accumulation unless a performance assessment is conducted. Rather than conduct the performance assessment, EnergySolutions seeks an exemption from this requirement as provided in UAC R313-12-55(1). EnergySolutions also requested that the exemption request be released for public comment for a period of 30 days, beginning on or before September 6, 2018.

Mr. Anderson explained that, in matters of significant public interest before him as Division Director, he has the discretion to initiate public comment on his own. In matters before the Board of significant public interest, which this is, he needs Board approval to initiate public comment. Therefore, the purpose of this meeting is to formally direct Mr. Anderson to solicit public comment on the exemption request, if the Board chooses to do so. Because EnergySolutions requested that the public comment period start before the Board's normally scheduled meeting of September 13, 2018, the emergency Board meeting was necessary.

Mr. Anderson also explained that the purpose of the emergency meeting is not to discuss the merits of EnergySolutions' exemption request. A formal presentation will be made by EnergySolutions in the September 13, 2018 Board meeting. The sole purpose of the meeting is to receive direction from the Board regarding the requested public comment period.

Mr. Anderson recommended that EnergySolutions' exemption request go out for public comment.

Richard Codell stated his support of a public comment period and felt the public needed adequate time to provide comments since this is such a controversial item.

Mark Franc also questioned whether 30 days was sufficient and asked if the Board could authorize additional time for public comment if an extension is requested.

Brett Mickelson clarified that whatever length of time the Board authorizes is the official time frame. If there is a request for additional time, the Board would have to reconvene to address the request or give Mr. Anderson the discretion to extend the public comment period.

Nathan Rich also spoke in favor a public comment period and was concerned that 30 days might not be enough time to receive comments. Mr. Rich was also concerned about the perception that the Board is trying to compress the schedule and thought it would be appropriate for EnergySolutions to clarify its urgency for the Board to address this matter in this manner.

Shawn Milne expressed his support for a public comment period but proposed a shorter period so the Board could review the comments at its next meeting. Mr. Milne also felt that any request for an extension of time needed to be legitimate and not just a delaying tactic.

Danielle Endres agreed with other Board members that a 30-day public comment period may not be enough time. She also stated she would not support a public comment period less than 30 days.

Vern Rogers provided information regarding the inquiry from the Department of Defense (DOD) for the possible management by EnergySolutions of depleted uranium metal penetrators currently being stored at the Tooele Army Depot and one other site. The time frame was set by the DOD due to its budgetary and scheduling restraints. Mr. Rogers felt that, based on the amount of the press this matter has received just in the 24 hours since this notice, the public does have the opportunity to be widely informed of this matter. EnergySolutions intends to have a full discussion during the September Board meeting and to be candid and to answer questions and to help the public feel certain and secure that this is a good opportunity to have EnergySolutions provide a solution to a Utah problem.

Mr. Anderson addressed Mr. Milne's proposal to review the public comments at the September Board meeting. Because the public comment period will still be open when the Board meets on September 13, 2018, it will not be possible to review the public comments in the September meeting.

Mr. Anderson further explained that there will likely be a request for an extension to the public comment period, given the interest in this issue. If that occurs, the Board would have to meet again to address the extension request or give Mr. Anderson the authority to extend the public comment period at his discretion if appropriate. This discretion could be provided in a Board motion.

Dennis Riding supported giving the Director the discretion to extend the public comment period if there is public interest.

Raymond Wixom, Attorney General's Office, acting as counsel to the Board, provided clarification that, under Utah Administrative Code R313-17-2(3), public comment periods must run at least 30 days. There is no discretion for a shorter period.

Brett Mickelson asked if any Board members wanted to recuse themselves from voting on this matter.

Vern Rogers recused himself from voting.

[Initial motion]

It was motioned by Nathan Rich and seconded by Dennis Riding that the Director initiate a 30-day public comment period to begin September 6, 2018 regarding EnergySolutions' request for an exemption from R313-25-9(5) of the Utah Administrative Code and further that the Board give authorization and discretion to the Director to extend the comment period for an additional 30 days if he receives a substantive request, that in his opinion, would merit the extension.

Mr. Milne asked if the motion could include language that any request for an extension be adequately supported.

Mr. Rich was open to other language in the motion. His intent was to give Mr. Anderson the ability to evaluate any requests for extension and decide if the request had merit or was simply a stalling tactic.

With that explanation, Mr. Milne was comfortable with the motion.

Mr. Franc suggested that the Board give discretion to the Director to determine the appropriate length of any extension based on the merit of the request, rather than specifying an additional 30 days.

In response to a question from Nathan Rich, Mr. Anderson stated he is comfortable with that flexibility.

It was proposed that the motion be amended to include language that any extension to the public comment period "not exceed an additional 30 days without another Board meeting."

It was motioned by Nathan Rich and seconded by Dennis Riding and UNANIMOUSLY CARRIED that the Director initiate a 30-day public comment period to begin September 6, 2018 regarding EnergySolutions' request for an exemption from R313-25-9(5) of the Utah Administrative Code and that the Board give authorization and discretion to the Director to extend the public comment period and set the length of the extension based on the merit of the request, not to exceed an additional 30 days, without another Board meeting.

The next Board meeting is scheduled for September 13, 2018.

III. Adjourn.

The meeting adjourned at 10:25 a.m.