

Approved Meeting Minutes -April 11, 2019

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
February 14, 2019
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Danielle Endres, Marc Franc, Brad Johnson (DEQ Deputy Director), Steve McIff, Vern Rogers and Shane Whitney

Board Members Telephonic Participation: Richard Codell, Jeremy Hawk and Shawn Milne

Board Members Absent/Excused: Nathan Rich

Staff Members Present: Rusty Lundberg, Brent Everett, Tom Ball, Kevin Carney, Ed Costomiris, David Esser, Arlene Lovato, Kaci McNeill, Bret Randall, Elisa Smith, Don Verbica and Otis Willoughby

Others Present: Judy Fahys

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Richard Codell, Jeremy Hawk and Shawn Milne participated via telephone.

II. Public Comments. – None.

III. Declarations of Conflict of Interest. – None.

IV. Approval of Meeting Minutes for the January 10, 2019 Board Meeting (**Board Action Item**).

It was moved by Shane Whitney and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approve the January 10, 2019 Board Meeting minutes.

V. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of December 2018 was \$13,891,549.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of January 2019 is \$13,904,114.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. The balance of the PST Trust Fund is watched closely to ensure sufficient coverage for covered releases.

Mr. Everett also provided the Board with statistics from the Underground Storage Tank (UST) program for the 2018 calendar year. There were 936 inspections completed during the year. There were 101 USTs that were closed and 105 new USTs installed. The number of UST facilities in Utah fluctuated throughout the year but as of the end of January 2019, there are 1,308 regulated UST facilities in Utah. Of those facilities, 936 or 72% participate in the PST Trust Fund.

Mr. Everett informed the Board that there is not any proposed legislation that will impact programs within the DERR this year.

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VI. Administrative Rules.

- A. Approval to proceed with formal rulemaking and 30-day public comment period for proposed changes to Used Oil Rules UAC R315-15-14, to revise the reimbursement rate for DIYer used oil collection centers (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager, reviewed the request for the Board to initiate formal rulemaking by filing with the Office of Administrative Rules and publishing in the March 1, 2019 Utah State Bulletin the proposed changes to UAC R315-15-14, Do-It-Yourself (DIYer) Reimbursement. Also to begin a 30-day public comment period from March 1, 2019 to April 1, 2019 on the proposed rule.

This request changes the reimbursement period for DIYer Used Oil Collection Centers (UOCC) from quarterly to semi-annually and increases the reimbursement rate from \$0.16 per gallon to \$0.25 per gallon for oil collected. The proposed rule changes to UAC R315-15-14 were provided to the Board in their February 14, 2019 Board packet.

Mr. Ball explained that several DIYer UOCCs were not receiving their reimbursements due to a conflict between the rule and agreements between the Division and Local Health Departments (LHD). Agreements between the Division and the LHDs require the LHDs to conduct semi-annual inspections of the DIYer UOCCs. During these inspections, the LHDs collect the used oil collection log sheets from the DIYer UOCCs. Because this was being done only twice a year, several of the DIYer UOCCs were not receiving their reimbursements because the time period for reimbursement in rule is quarterly. In order to correct this problem, the time period in the rule for reimbursements is being changed from quarterly to semi-annually and an additional 30 days has been added to the time period for submission of requests for a total time frame of 60 days to submit reimbursement requests.

Also, the reimbursement rate for DIYer UOCCs has not increased since 1993. Because of this, some DIYer UOCCs are not recycling their oil as this rate is too low to make it worth the cost of transportation. Based on an analysis performed by the Division, it has been determined that \$0.16 per gallon in 1993 dollars is equivalent to \$0.25 per gallon in 2017 dollars and therefore the Division is proposing to raise the rate to \$0.25 per gallon. The Board is authorized under Subsection 19-6-704(1) to make rules necessary to administer the used oil recycling program. The Board is authorized under Section 19-6-717 to establish by rule the amount of payment the Division shall pay as a recycling incentive to registered DIYer UOCCs. This allows the Board to increase the amount to promote collection of used oil as long as there are funds available in the Used Oil Collection Administration Account. The rule changes also meet existing DEQ and state rulemaking procedures.

In accordance with Utah Code §19-6-717, the Board must determine that there are enough funds available to fund the increase. Cost analysis show that for the last three fiscal years, the Used Oil Collection Administration Account has maintained an average balance of \$748,768 after all expenses, including reimbursements for used oil collected, have been paid. The largest amount of used oil collected for which reimbursements were paid out of the fund in one year was 474,205 gallons (the information provided to the Board in their February 14, 2019 Board packet incorrectly listed it as \$ 474,205 gallons). At \$0.25 per gallon this would result in an increase of \$42,678 dollars to the total reimbursements paid out of the account. Based on the review of the account balance for the last three years there are adequate funds to cover this increase in cost.

Board approval is necessary to begin the formal rulemaking process by filing with the Office of Administrative Rules and conducting a public comment period. The Acting Director recommended the Board approve proceeding with formal rulemaking and public comment.

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It was moved by Mark Franc and seconded by Dennis Riding and UNANIMOUSLY CARRIED to proceed with formal rulemaking and 30-day public comment period on proposed changes to Used Oil Rules UAC R315-15-14.

- B. Approval to proceed with formal rulemaking and 30-day public comment period for proposed rule changes to X-Ray Rules R313-28, to allow the use of whole body x-ray units for security purposes (Board Action Item).

Tom Ball, reviewed the request for the Board to initiate formal rulemaking by filing with the Office of Administrative Rules and publishing in the March 1, 2019 Utah State Bulletin proposed changes to UAC R313-28-31 allowing the use of low dose, whole body scanners used for security purposes in correctional facilities. Also to begin a 30-day public comment period from March 1, 2019 to April 1, 2019 on the proposed rule.

UAC R313-28-31 currently prohibits the exposure of individuals to x-rays except for healing arts purposes when the exposure has been specifically ordered and authorized by a licensed individual. In 2014, the Division of Radiation Control learned that jails and prisons were using low dose, whole body scanners for security purposes when two scanners were registered. Since that time, an additional five scanners have been registered. While not being used for healing arts, the Division considers this a legitimate use of x-ray equipment. Due to the current prohibition in the rules, the Board would be required to issue an exemption for each of these scanners.

Because the Division considers this type of scanning to be a legitimate use and due to the increasing numbers of the scanners being registered, the Division feels that an exemption written into the rules would be more efficient than issuing an exemption for each individual scanner.

The Executive Summary and the proposed rule changes to UAC R313-28-31 were provided to the Board in their February 14, 2019 Board packet.

The Board is authorized under Subsection 19-6-104 to make rules that are necessary to implement the provision of the Radiation Control Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures. Board approval is necessary to begin the formal rulemaking process by filing with the Office of Administrative Rules and conducting a public comment period. The Acting Director recommended the Board approve proceeding with formal rulemaking and public comment.

Dick Codell questioned if an evaluation had been conducted on the total amount of dose that an individual may be exposed to over a year long period. Mr. Ball stated an evaluation of the exposures caused by the scanners has been determined that it will be well below what is considered safe for human exposure. Mr. Codell stated his concern is with the frequency of exposure. Mr. Ball stated that he's not aware of the frequency of the exposure to these scanners, as they are not being used for visitors, they will be used on the inmates specifically searching for contraband, etc.

Mr. Ball clarified that UAC R313-28-31 currently prohibits the exposure of individuals to x-rays except for healing arts when the exposure has been specifically ordered and authorized by a licensed individual. This rule change only addresses the prohibition. These machines will still be required to be registered, inspected, etc.

Jeremy Hawk questioned if any exemption requirements associated with training the operator, etc. will be changed. Mr. Ball stated no exemptions will be made except for the prohibition. Mr. Hawk had concerns regarding the training requirements. Mr. Ball stated that training requirements are administered through

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DOPL. Mr. Hawk questioned UAC R313-28-31(2)(b) and asked if that needed to be addressed in the rule changes. Mr. Ball stated he will look into this matter and report back at the next meeting. Rusty Lundberg stated that if additional rule changes are necessary, it will be brought back before the Board.

It was moved by Steve McIff and seconded by Danielle Endres and UNANIMOUSLY CARRIED to proceed with formal rulemaking and 30-day public comment period on proposed changes to X-Ray Rules UAC R313-28, to allow the use of whole body x-ray units for security purposes.

- C. Approval to proceed with formal rulemaking and 30-day public comment period for proposed rule changes to UAC R315-260, R315-261, and R315-262 for recalled Takata airbag inflators (Board Action Item).

Tom Ball, reviewed the request for the Board to initiate formal rulemaking by filing with the Office of Administrative Rules and publishing in the March 1, 2019 Utah State Bulletin, the proposed changes to R315-260, Hazardous Waste Management System, R315-261, General Requirements – Identification and Listing of Hazardous Waste, R315-262, Hazardous Waste Generator Requirements of the hazardous waste rules to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on November 30, 2018 (83 FR 61552). Also to begin a 30-day public comment period from March 1, 2019 to April 1, 2019 on the proposed rules.

Mr. Ball informed the Board that a copy of the Federal Register was inadvertently left out of the February 14, 2019 Board Packet.

In May of 2015, the U.S. Department of Transportation (DOT) announced a national recall of airbag inflators manufactured by Takata due to a defect which has resulted in fifteen deaths and at least 250 injuries in the U.S. as of August 2018. This recall affects 19 vehicle manufactures with approximately 60-70 million airbag inflators. A Preservation Order issued by DOT in February 2015 required Takata to preserve all recalled airbag inflators. The EPA issued a memorandum in June of 2017, stating that the recalled airbag inflators were not subject to hazardous waste regulations while being held under the Preservation Order. The EPA clarification states that the recalled inflators would be considered a solid waste once the order was lifted. Airbag inflators meet both the ignitability and reactivity hazardous waste characteristics and therefore would need to be managed as a hazardous waste. In April of 2018, the Preservation Order was amended requiring Takata to keep only a percentage of the inflators allowing the remainder to be disposed. The amended order no longer requires affected vehicle manufacturers to send their recalled airbag inflators to Takata thus allowing the manufacturers to dispose of the inflators on their own. DOT has determined that it is imperative that the recall of these airbag inflators be accelerated because the risk of serious injury or death increases over time because the inflators become more unstable as they age and are exposed to high humidity. It is believed that these rule changes will assist in facilitating the recall by exempting the collection of airbags from the hazardous waste requirements, as long as certain conditions are met. These rule changes became effective at the Federal level on November 30, 2018. The proposed changes to UAC R315-260, 261 and 262 were provided in the Board's February 14, 2019 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 rule changes also meet existing DEQ and state rulemaking procedures.

Board approval is necessary to begin the formal rulemaking process by filing with the Office of Administrative Rules and conducting a public comment period. The Acting Director recommended the Board approve proceeding with formal rulemaking and public comment.

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Mr. Ball clarified that the airbags are required to be sent to EPA designated incineration facilities. Mr. Ball stated that this rule change is to align our requirements with the EPA. The airbags are currently in storage in three facilities that are managed by Takata. The rule limits the number of airbags stored to 250 with a time limit of 180 days at dealerships/manufacturers that remove the airbags. The goal is to not have these airbags left around with the potential of being reinstalled in other vehicles.

It was moved by Danielle Endres and seconded by Steve McIff and UNANIMOUSLY CARRIED to proceed with formal rulemaking and 30-day public comment period on proposed changes to UAC R315-260, R315-261, and R315-262 for recalled Takata airbag inflators.

VII. Radioactive Materials.

A. Approval for the move of Radioactive Action Materials from the Multi-Agency State Office Building to the Technical Services Center. Radioactive Materials License Number UT 1800133 exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in UAC R313-19-100(5)(b) (Board Action Item).

Ryan Johnson, Environmental Scientist, UMILLS/Ram Section, reviewed the request from the Division for a one-time exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in UAC R313-19-100(5)(b).

In March or April 2019, the Department of Environmental Quality will be moving environmental monitoring equipment and other items into the Technical Services Center, located at 240 North 1950 West in Salt Lake City, Utah. A portion of the building is assigned to the Division. The Division will use the TSC to house its calibrator and other calibration and reference sources containing small quantities of radioactive materials (not regulated by the NRC), and other specialized equipment. The Division uses the calibrator to calibrate radiation survey instruments used during inspections and investigations. The provisions of 49 CFR 171.1(d)(5) state, in part, that the hazardous material requirements for transportation do not apply to the transportation of a hazardous material in a motor vehicle operated by a State employee solely for noncommercial government purposes. 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. Therefore, 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.

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 NRC's letter was provided to the Board in their February 14, 2019 Board packet.)

Based on this notice, in the fall of 2018, the University of Utah (U of U) requested an exemption from UAC R313-19-100(5)(b) [10 CFR 71.5(b)] which the Board granted. The Division now needs to request a similar exemption; however, this will be a one-time exemption and will not be ongoing.

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 which are found in UAC R313-19-100(5)(b). The calibrator and reference sources all contain small quantities of radioactive materials. The largest source is contained in the calibrator and while it is a relatively small

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source, this source is required to be licensed. The source in the calibration device is shielded by the calibrator in a manner that minimizes the radiation exposures to nearby individuals when the source is locked in its shielded position. The source would be required to be stored and locked in the shielded position within the calibrator prior to transport. Therefore, in order to transport the calibrator as stated above, and any other calibration or reference sources regulated by the NRC from the MASOB to the TSC, the Division is requesting an exemption from the requirements of UAC R313-19-100(5)(b) [10 CFR 71.5(b)].

Since this exemption request will only apply to a one-time transport of small quantities of radioactive materials, that will be transported by the Division personnel, and poses no undue hazard to the public or the environment, the Acting Director recommended that the exemption be approved. This calibrator will be on a public road for approximately 200 meters.

It was moved by Mark Franc and seconded by Shawn Milne and UNANIMOUSLY CARRIED to approve the exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in UAC R313-19-100(5)(b).

Rusty Lundberg informed the Board that the new TSC is near completion and that Brad Johnson, DEQ Deputy Director, has been instrumental in coordinating the many details that have gone into the design and construction to ensure that it meets all the Department's needs. Mr. Lundberg expressed appreciation, on behalf of the Department, to Brad and his efforts in accomplishing this task. The TSC will be able to house and co-locate all of the monitoring and field services that are conducted by the Department while providing improved facilities. It is anticipated that the move of the radioactive action materials from the MASOB to the TSC will occur next month.

Brad Johnson stated that this particular source will be located in a room that has 10" thick concrete walls, providing for a more secure location. Brad stated the TSC will be a tremendous addition to enhance the work conducted at DEQ. A certificate of occupancy is expected to be obtained the first week in March; it is anticipated it will take approximately a month to get all the items moved over.

Rusty invited the Board to tour the TSC at a future meeting, possibly at the end of the next Board meeting.

VIII. Director's Report.

Rusty Lundberg reviewed the "Bill Summary" for legislation introduced during the 2019 Legislative session. A handout was provided to the Board. (A copy of this handout is provided with the meeting minutes).

Rusty informed the Board that in conjunction with the information provided regarding H.B. 310, Solid and Hazardous Waste Amendments, a copy of a letter from the EPA was distributed to the Board regarding a deficiency EPA had identified that affects the equivalency of Utah's authorized RCRA Subtitle C Hazardous Waste Program with the federal RCRA statute and federal hazardous waste rules that was addressed by H.B. 310. (A copy of this letter is provided with the meeting minutes.)

Rusty discussed H.B. 220 stating that one portion of the bill was intended to provide an evaluation process for waste streams based upon the operational procedures that are in place for Class A waste material. The waste will be evaluated without applying any additional credit for engineered barriers, while recognizing existing operational procedures that are in place in order to determine ultimate exposures and waste acceptability.

Board members requested further clarification regarding H.B. 220, specifically if Class B and Class C waste, under certain circumstances, could be accepted at EnergySolutions. Rusty stated that the waste will be

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evaluated based on its concentration rather than a classification. EnergySolutions would be required to demonstrate that the waste would be safe for disposal.

Board members asked if they would be involved in the process to approve this type of waste on a case-by-case basis. Rusty stated the bill is written so that the Director of the Division would authorize alternate requirements for waste acceptance. Rusty stated that the Board was involved in the DU penetrator request because it was a request for an exemption of a rule and in those cases the Board is the proper jurisdictional authority. Waste classification is a role of the Division. The Director oversees and licensing for the proper management of licensed material and waste that are accepted by EnergySolutions.

Bret Randall, Attorney General's Office, stated that unless the language changes, there is a provision the Board may undertake rulemaking with the respect to this power the Director would have. This is based on 10 CFR 61.58. The Legislature is giving the authority to the Director and the role for the Board would be any rule making required by this legislation.

IX. Other Business.

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

The Board meeting scheduled for March 14, 2019 was cancelled. The next Board meeting will be held on April 11, 2019 at 1:30 p.m. at the Utah Department of Environmental Quality, located at 195 North 1950 West, SLC.

X. Adjourn.

The meeting adjourned at 2:15 p.m.