

APPROVED MEETING MINUTES - JUNE 13, 2019

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
May 9, 2019
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Scott Baird, Deputy Director (Acting for Alan Matheson), Richard Codell, Mark Franc, Jeremy Hawk, Steve McIff, Shawn Milne, Nathan Rich and Shane Whitney

Board Members Telephonic Participation: Danielle Endres and Vern Rogers

Board Members Absent/Excused: Alan Matheson

Staff Members Present: Ty Howard, Therron Blatter (Acting for Brent Everett), Tom Ball, Edward Costomiris, Deborah Ng, Arlene Lovato, Rusty Lundberg, Tina Mercer, Allan Moore, Rick Page, Alma Rosas, Elisa Smith, Raymond Wixom and Otis Willoughby

Others Present: William Simmons, Melissa Scales, Tyler Lee, Tim Orton

Others Telephonic Participation: David Cronshaw

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Board members Danielle Endres and Vern Rogers participated via telephonically.

II. Public Comments. – None.

III. Declarations of Conflict of Interest.

Jeremy Hawk declared a conflict of interest and informed the Board that he is one of the individuals requesting the Board's approval to be certified as a Mammography Imaging Medical Physicists and will abstain from voting on Agenda Item VI. A.

Shane Whitney declared a conflict of interest and will abstain from voting on Agenda Item VII. A.

Vern Rogers declared a conflict of interest and will abstain from voting on Agenda Item VIII. A.

IV. Approval of Meeting Minutes for the February 14, 2019 Board Meeting (**Board Action Item**).

It was moved by Shane Whitney and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve the April 11, 2019 Board Meeting minutes.

V. Underground Storage Tanks Update.

Therron Blatter, Underground Storage Tank Branch Manager 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 March 2019 was \$13,826,130.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of April 2019 is \$13,764,148.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. The DERR continues

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to watch the cash balance closely, as we have, particularly with the passage of House Bill 120, which increased the coverage under the fund from \$990,000.00 to \$1,990,000.00.

VI. X-Ray Program.

- A. Approval of Mammography Imaging Medical Physicists (MIMPs) in accordance with UCA 19-6-104(2)(b) (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager of the Division of Waste Management and Radiation Control, reviewed the request for the Board's approval of qualified Mammography Imaging Medical Physicists (MIMPs). Mr. Ball stated that individuals referred to as MIMPs must submit an application for review of qualifications to be certified by the Board annually. These physicists perform radiation surveys and evaluate the quality control programs of the facilities in Utah providing mammography examinations.

In April 2019, sixteen individuals filed applications to be recertified as a MIMP. Fifteen of the applicants are renewals and one new application was received this year. Division staff has reviewed the applicants' qualifications. All applicants meet the requirements detailed in R313-28-140 of the Utah Administrative Code. A list of the applicants was included in the Board's packet.

The Director of the Division of Waste Management and Radiation Control recommends the Board issue a certificate of approval for the sixteen applicants presented to the Board.

Tom Ball clarified that the current rules require MIMPs to submit their application annually to be recertified. However, a new applicant can submit an application at any time throughout the year and then will be added to the group submitted to the Board for their yearly approval. The rule would have to be amended to allow for any flexibility regarding approving timeframes other than the annual renewal, etc.

It was moved by Shawn Milne and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve the Mammography Imaging Medical Physicists (MIMPs) in accordance with UCA 19-6-104(2)(b).

VII. Hazardous Waste Section.

- A. Approval of proposed Stipulation and Consent Order between the Board and Clean Harbors, Aragonite (Board Action Item).

Deborah Ng, Hazardous Waste Section Manager of the Division of Waste Management and Radiation Control, provided an overview of the Stipulation and Consent Order (SCO) No. 1410021 to resolve Notice of Violation No. 1401002 issued to Clean Harbors Aragonite, LLC (CHA) on April 17, 2014, and violations discovered during inspections of the facility or violations reported by CHA during fiscal years 2014 through 2018 (FY2014 through FY2018). This item was presented to the Board as an information item in the April 11, 2019 Board meeting.

A tolling agreement has been established between the Director and CHA to allow for the continued negotiations while preserving CHA rights to appeal. The inspections conducted in 2014 through 2018 had similar violations as found during the inspection in 2013. The Director and CHA felt it was in the best interest of both parties to combine all violations into one SCO for resolution. The proposed SCO includes a penalty of \$330,000.00 for the violations identified during the time period of FY2013 through FY2018.

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The 30-day public comment period for this SCO began on March 19, 2019 and ended on April 18, 2019. No comments were received. This is a Board Action Item and the Director recommends approval of the proposed SCO.

Representatives from Clean Harbors were in attendance at the meeting to answer any questions.

Dennis Riding questioned if the violations were all the same during the six year period and whether the Division anticipates the violations will continue. Ms. Ng stated the violations were very similar and CHA has hired a new General Manager, Mr. William Simmons, who could provide better insight regarding future facilities operations.

Mr. William Simmons, Clean Harbors Facility General Manager, informed the Board that he has been employed by Clean Harbors for approximately eleven years and has recently moved to Utah to manage CHA. Mr. Simmons mentioned the elements he anticipates will benefit the facility's operations. Mr. Simmons thanked the Division staff and feels good about the progress that is being achieved and from his perspective, CHA is seeing a significant reduction in repeat violations. Mr. Simmons indicated there has been a tremendous amount of staff training and he is now holding them accountable for their actions.

Mr. Rich questioned what the specific violations were and whether the SCO included anything besides the penalty assessed. Ms. Ng stated that part of the initial settlement negotiation discussions included the facility performing supplemental environmental projects. However, during negotiations it was agreed that the proposed settlement would be a monetary penalty.

Mark Franc questioned the amount of the penalty and what considerations were made in determining it. Mr. Franc stated that one intent of a penalty is its deterrent factor and although \$330,000.00 seems like a lot of money, if you break it down it equals roughly \$50,000.00 a year, and questioned if some less than scrupulous businesses would consider that just a cost of doing business.

Rusty Lundberg, Deputy Director of the Division of Waste Management and Radiation Control, stated that Mr. Franc's question is a valid one. Mr. Lundberg informed the Board that penalties are negotiated with a company, unless the courts are directly involved. The first option of the Division is to work with the facility to negotiate an agreement for an appropriate penalty. The Division considers an amount that would be a deterrent as well as allows for the corrective actions the facility needs to make to stay in compliance. Mr. Lundberg also stated the Division looks at other factors and briefly discussed them. Mr. Lundberg stated that this SCO is different than those the Board has approved in the past, as different aspects were looked at during the negotiation process than is normally used.

Mr. Franc asked if the Division felt that this penalty amount is sufficient to act as deterrent for CHA. Mr. Lundberg stated that with the hiring of the new manager, facility and employee commitment and their willingness to work with Division staff, it is anticipated that it will benefit the overall operations at the facility and help them operate in a compliant manner.

Shawn Milne stated that he appreciates the comments made from Board member Mr. Franc. Mr. Milne reviewed his history regarding his commitment to CHA in Tooele County. Mr. Milne stated that when he sticks out his neck for CHA and finds out about situations like this, it is an embarrassment to him and brings shame upon the community as a whole. Mr. Milne stated that he agrees with Mr. Franc and feels that \$330,000 penalty is fairly diminutive and felt he needed to express his opinion as he represents the affected community. Mr. Milne described a situation dealing with a repeat offender in his county and his desire that something be done that benefits the community he serves. Mr. Milne asked that in the future if the Division staff could work with the local community, local jurisdiction, etc. Mr. Milne acknowledged that CHA is a good corporate citizen by and large, but when offenses are made that bring shame to the community he

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would appreciate being informed and to discuss the matters as a community partner. Mr. Milne stated that depending on what this is, and the infraction details, it may be rather diminutive and just the cost of doing business that a company is willing to absorb, but he doesn't want to ever be in the position to have to defend this type of matter within his jurisdiction.

Mr. Lundberg stated that Commissioner Milne's statements are valid points and the Division looks for a balance for the community impacted and that is why a supplemental environment projects are often negotiated. Mr. Lundberg further stated that the overall intent is to look at what other options are valid other than just a cash penalty settlement. Ms. Ng stated that negotiation discussions included options for supplemental environmental projects, such as a household hazardous waste collection project. Commissioner Milne stated that type of event would be well received, as it would benefit the local community.

Dennis Riding asked if a supplemental environmental project was discussed during the settlement agreements. Mr. Lundberg stated that yes, environmental projects were considered however, CHA felt that if they could dedicate more to a "cash" penalty and move forward with new management, a fresh start, then they would consider incorporating supplemental environmental projects if futures violations occur.

Mr. Simmons stated that CHA does not condone being in noncompliance or tolerant violating the rules. Clean Harbor's has the highest expectations from him, the facility and his team. These issues are at CHA not at a corporate level. The corporate level made the change with him and he could not be more proud of the company he works for. Mr. Simmons described the collection of household waste community event that recently took place in the area and reiterated that Clean Harbors has a definitive affection for being a good community member and that he is here to support that. CHA is holding community events, including providing funds back to the community, and this is not only to try support the community, but it is to also get their company name out to the community, as they want to be known as a good employer, etc. At the corporate level Clean Harbors has the highest expectations and the lowest tolerance for violations. CHA has over \$8 million in projects they are currently working on and several Class III modifications have been submitted to the State.

It was moved by Mark Franc and seconded by Shawn Milne and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order between the Board and Clean Harbors, Aragonite.

VIII. Low-Level Radioactive Waste Section.

- A. Approval of EnergySolutions' request for a site-specific treatment variance from the Utah Administrative Code. EnergySolutions seeks authorization to treat waste containing High-Subcategory Mercury by stabilization (Board Action Item).

Otis Willoughby, Environmental Scientist, Low Level Radioactive Waste Section of the Division of Waste Management and Radiation Control, reviewed EnergySolutions' request submitted on March 25, 2019, for a site specific treatment variance from the Utah Administrative Code to treat by stabilization, waste containing High-Subcategory Mercury. This agenda item was presented to the Board as an information item in the April 11, 2019 Board meeting.

EnergySolutions requested approval to receive and dispose, in EnergySolutions' Mixed Waste Landfill Cell, waste containing the D009 or U151 High Mercury-Organic Subcategory and High Mercury-Inorganic Subcategory hazardous waste codes that has been treated using stabilization/amalgamation technologies.

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The 30-day public comment period for this variance began April 2, 2019 and ended May 2, 2019. No public comments were received.

The Director recommended approval of this variance based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the required method would create additional waste, and require waste handling that could possibly expose workers to unnecessary contact with the waste. This treatment is recommended by the USEPA and *EnergySolutions* has successfully treated similar waste streams in the past using this approach.

Dennis Riding asked if this is a new variance. Mr. Willoughby stated that this is the sixteenth time *EnergySolutions* has requested similar site-specific treatment variances for High Mercury Subcategory waste. This variance request consists of waste that may be shipped to *EnergySolutions* over the next year. To date, *EnergySolutions* has disposed of approximately 11,100 cubic feet of treated High Mercury Subcategory waste. From knowledge of the current market of High Mercury Subcategory waste requiring treatment or disposal, and from past experience receiving this type of waste, *EnergySolutions* anticipates less than 500 cubic feet of additional High Mercury Subcategory waste for disposal in the next year under this treatment variance.

It was moved by Dennis Riding and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve *EnergySolutions*' request for a site-specific treatment variance from the Utah Administrative Code. *EnergySolutions* seeks authorization to treat waste containing High-Subcategory Mercury by stabilization.

IX. Presentation on the Utah Waste Tire Recycling Act Reauthorization.

Allan Moore, Solid Waste Section Manager of the Division of Waste Management and Radiation Control, informed the Board that the Utah Waste Tire Recycling Act Reauthorization presentation will also be presented to the Natural Resource, Agriculture and Environment Legislative Interim Committee in the near future. The Waste Tire Recycling Act will sunset next year and the Division has been asked to present information to the committee. (A copy of the PowerPoint is available with the meeting minutes).

Mark Franc asked about the goals of the fund, i.e., is the intent to eliminate used tire piles and to accommodate recycling of those tires? He had questions regarding the availability of those funds to the counties.

Mr. Moore stated that the intent is to eliminate used tire piles and if a county has a tire pile, the Division will work with them to access funds for cleanup. The funds are available for abandoned tire piles as well as landfill tire piles. Mr. Franc asked if a private entity has tire piles, could they work with their county to obtain the funds to clean up the tire piles? Mr. Moore stated, yes, and the Division will work with the local government entity to distribute the funds, etc. Ty Howard clarified a "tire pile" is defined in the rules as a collection of over 1,000 tires.

Brett Mickelson stated that the methodology in small rural landfills is to bury the tires and asked if the Division anticipates any of those small facilities piling up 1,000 tires to try to take advantage of this funding option. Mr. Moore stated that now many of the landfills do not bury tires, but, instead have large tire piles because they collect them rather than dispose of them. Mr. Moore stated that the recent audit pointed out that landfills should not be creating tire piles. Mr. Mickelson asked if this issue will be reflected in permit renewals etc. to clarify some of these issues. Mr. Moore stated that, yes, there will be some changes made to permits. Mr. Franc stated that the solid waste rules allow for incidental tires within the waste stream and in attempt to be a good citizen some landfill operators pull them out, but from a regulatory standpoint it might

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be preferable to leave those incidental tires in the landfill. As a result you may see tires in the landfill, which wouldn't mean they are accepting tires other than those incidental tires. Mr. Moore reviewed the tire pile incident/cleanup of the hundreds of tires illegally dumped at the Lee Kay Ponds.

Mr. Rich questioned if it wouldn't be more efficient to help landfills accept tires and then have them recycled rather than waiting for a tire pile to be created, which would eventually cost the fund to recycle them.

Mr. Moore stated that is a difficult question to answer as that was debated with the legislative auditors over management of tires specifically in rural landfills. A viable solution is needed to manage tires in rural Utah. In rural Utah, if a landfill does not accept tires they will end up in a ravine, etc. Mr. Rich stated that if you have a facility designated to accept and manage tires there should be a way to weave the program to take advantage of that. Mr. Moore stated that the Division will continue to work with legislators to come up with a solution.

Scott Baird, Deputy Director of the Department of Environmental Quality, questioned if these types of issues should be included as part of the presentation that is going to be given at the upcoming Natural Resources, Agriculture and Environment Legislative Interim Committee meeting. Given the legislature is always looking for good ideas to help communities and improve programs. It should not be an issue in moving the reauthorization of the act forward, but it may be an opportunity to raise these issues. Mr. Baird stated that if there are other questions, it would be valuable to have some feedback to present to the Interim Committee. Mr. Baird and Mr. Moore stated that these issues will be incorporated in the presentation with the legislators.

X. Election of Board Chair and Vice Chair (Board Action Item)

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

Shane Whitney nominated Brett Mickelson to serve as the Board Chairman, Mark Franc seconded the motion. Shawn Milne moved to close the nomination and accept Brett Mickelson by acclamation.

It was moved by Shane Whitney and seconded by Mark Franc and UNANIMOUSLY CARRIED that Brett Mickelson be elected to serve as the Board Chairman.

Steve McIff nominated Dennis Riding to serve as the Board Vice-Chairman, Mark Franc seconded the motion. Shawn Milne moved to close the nomination and accept Dennis Riding by acclamation.

It was moved by Steve McIff and seconded by Mark Franc and UNANIMOUSLY CARRIED that Dennis Riding be elected to serve as the Board Vice-Chairman.

XI. Other Business.

A. Misc. Information Items. – None to Report.

B. Scheduling of next Board.

The next Board meeting will be held on June 13, 2019 at 1:30 p.m. at the Utah Department of Environmental Quality, located at 195 North 1950 West, SLC.

XII. Adjourn.

The meeting adjourned at 2:30 p.m.