

APPROVED MEETING MINUTES – MAY 9, 2019

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
April 11, 2019
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Richard Codell, Marc Franc, Jeremy Hawk, Alan Matheson, Vern Rogers and Shane Whitney

Board Members Absent/Excused: Dennis Riding (Vice-Chair), Danielle Endres Steve McIff, Shawn Milne and Nathan Rich

Staff Members Present: Ty Howard, Brent Everett, Deborah Ng, Arlene Lovato, Rusty Lundberg, Kaci McNeill, Rick Page, Alma Rosas, Elisa Smith, Raymond Wixom and Otis Willoughby

Others Present: Roger Alexander, Steve Johnson, Tyler Lee, 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. Dennis Riding (Vice-Chair), Danielle Endres, Steve McIff, Shawn Milne and Nathan Rich were excused from the meeting. No telephonic participation.

II. Introduction of new Director, Ty L. Howard

Alan Matheson introduced Ty Howard, the new Director of the Division of Waste Management and Radiation Control. Alan stated that Ty is no stranger to UDEQ, as he worked for UDEQ years ago in various divisions that included the Division of Environmental Response and Remediation, the Division of Solid and Hazardous Waste and the Division of Air Quality. Mr. Howard also has experience working in the private sector working for a consulting firm and with LafargeHolcim, a cement manufacturer. Mr. Howard brings great knowledge and a demeanor of openness and willingness to listen to input in seeking sound practical solutions. Mr. Howard cares very much about this state and will ensure that a good job is done in protecting the environment and the citizens of the state. Mr. Matheson stated that the Department is sincerely delighted to have Ty on board and anticipates the Board will enjoy getting to know him and working with him. The Department will continue to get him out in the community working with those who are regulated by the Division and others that are interested in their efforts.

III. Public Comments. – None.

IV. Declarations of Conflict of Interest. – None.

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

It was moved by Shane Whitney and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve the February 14, 2019 Board Meeting minutes.

VI. 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 February 2019 was \$14,342,630.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of March 2019 is \$13,826,130.00. 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.

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VII. Administrative Rules.

- A. Approval of final adoption of proposed rule changes to Used Oil Rules UAC R315-15-14, to revise the reimbursement rate for DIYer used oil collection centers (Board Action Item).

Rusty Lundberg, Deputy Director of the Division of Waste Management and Radiation Control, reviewed the request for the Board to approve for final adoption the proposed changes to UAC R315-15-14, Do-It-Yourself (DIYer) Reimbursement.

At the Board meeting on February 14, 2019, the Board approved the proposed changes to R315-15-14 for formal rulemaking and for the proposed changes to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published in the March 1, 2019 issue of the Utah State Bulletin (Vol. 2019, No. 5). Selected pages from the Utah State Bulletin showing the publication of the proposed changes were provided to the Board in their April 11, 2019 Board packet.

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.

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. Based on the review of the account balance for the last three years there are adequate funds to cover this increase in cost.

The public comment period for this rulemaking ended on April 1, 2019. No comments were received. The Director recommends the Board approve final adoption of the rule changes to R315-15-14 as published in the March 1, 2019 issue of the Utah State Bulletin and set an effective date of April 15, 2019.

It was moved by Jeremy Hawk and seconded by Marc Franc and UNANIMOUSLY CARRIED to approval for final adoption the proposed rule changes to Used Oil Rules UAC R315-15-14 and set an effective date of April 15, 2019.

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- B. Approval of final adoption of proposed rule changes to X-Ray Rules UAC R313-28, to allow the use of whole body x-ray units for security purposes (Board Action Item).

Rusty Lundberg reviewed the request for the Board to approve for final adoption the proposed rule changes to UAC R313-28-31 allowing the use of low dose, whole body scanners used for security purposes in correctional facilities.

At the Board meeting on February 14, 2019, the Board approved the proposed changes to UAC R313-28-31 for formal rulemaking and for the proposed changes to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published in the March 1, 2019 issue of the Utah State Bulletin (Vol. 2019, No. 5). Selected pages from the Utah State Bulletin showing the publication of the propose changes were provided to the Board in their April 11, 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 rule changes also meet existing DEQ and state rulemaking procedures.

The public comment period for this rulemaking ended on April 1, 2019. No comments were received. Board approval for final adoption of the rule change is necessary. The Director recommends the Board approve final adoption of the rule changes to UAC R313-28-31 as published in the March 1, 2019 issue of the Utah State Bulletin and set an effective date of April 15, 2019.

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. These machines will still be required to be registered, inspected, etc.

At the last Board meeting, Jeremy Hawk questioned UAC R313-28-31(2)(b) and asked if that needed to be addressed in the rule changes. Mr. Lundberg stated that after further review, no additional rule changes are necessary regarding this matter.

It was moved by Shane Whitney and seconded by Jeremy Hawk and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to X-Ray Rules UAC R313-28, to allow the use of whole body x-ray units for security purposes and set an effective date of April 15, 2019.

- C. Approval of final adoption of proposed rule changes to UAC R315-260, R315-261, and R315-262 for recalled Takata airbag inflators (Board Action Item).

Rusty Lundberg reviewed the request for the Board to approve for final adoption 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). The changes will assist in facilitating the recall of airbag inflators by exempting the collection of airbag waste from hazardous waste requirements so long as certain conditions are met.

At the Board meeting on February 14, 2019, the Board approved the proposed changes to R315-260, R315-261 and R315-262 for formal rulemaking and for the proposed changes to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published

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in the March 1, 2019 issue of the Utah State Bulletin (Vol. 2019, No. 5). Selected pages from the Utah State Bulletin showing the publication of the proposed changes were provided to the Board in their April 11, 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.

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 public comment period for this rulemaking ended on April 1, 2019. No comments were received. Board approval for final adoption of the rule changes is necessary. The Director recommends the Board approve final adoption of the rule changes to R315-260, R315-261 and R315-262 as published in the March 1, 2019 issue of the Utah State Bulletin and set an effective date of April 15, 2019.

It was moved by Marc Frank and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to UAC R315-260, R315-261, and R315-262 for recalled Takata airbag inflators and set an effective date of April 15, 2019.

VIII. Hazardous Waste Section.

- A. Proposed Stipulation and Consent Order between the Board and Clean Harbors, Aragonite (Information Item Only).

Deborah Ng, Hazardous Waste Section Manager, reviewed 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 and/or violations reported by CHA during fiscal years 2014 through 2018 (FY2014 through FY2018).

The Division conducted a hazardous waste inspection at CHA from September 3 through September 12, 2013 (the FY2013 inspection). Based on findings documented during the FY2013 inspection and self-reported non-compliance, the Director issued Notice of Violation No. 1401002 (the NOV) April 17, 2014. Prior to resolving the NOV, additional inspections were conducted at CHA in FY2014, FY2015, FY2016, FY2017, and FY2018. CHA also notified of other issues of non-compliance during that time period. These violations were similar to those noted on the FY2013 NOV. This SCO combines the violations from the FY2013 NOV and the violations from the FY2014 through FY2018 inspections and self-notifications. The SCO includes a penalty of \$330,000.00 for all of the violations during the time period of FY2013 through FY2018.

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19-6-104(1)(f) of the Utah Solid and Hazardous Waste Act requires the Board to review settlements negotiated by the Director in accordance with Subsection 19-6-107(3)(a) that require a civil penalty of \$25,000 or more.

This is an informational item before the Board. The public comment period for this SCO began on March 19, 2019 and will end on April 18, 2019. The Director will provide a recommendation at the next Board meeting. Representatives from Clean Harbors were in attendance at the meeting to answer any questions.

IX. Low-Level Radioactive Waste Section.

- A. *EnergySolutions*' request for a site-specific treatment variance from the Hazardous Waste Management Rules. *EnergySolutions* seeks authorization to treat waste containing High-Subcategory Mercury by stabilization (Information Item Only).

Otis Willoughby, Environmental Scientist and Tim Orton, *EnergySolutions* representative, reviewed *EnergySolutions*' request submitted on March 25, 2019, for a site specific treatment variance from the Utah Hazardous Waste Management Rules to treat by stabilization, waste containing High-Subcategory Mercury.

Tim Orton gave details of *EnergySolutions* variance request for approval by the Board 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 and has been treated using stabilization/amalgamation technologies. Furthermore, *EnergySolutions* will perform the stabilization/amalgamation treatment on D009 and U151 High Mercury Subcategory waste streams that have not been treated prior to arrival at the *EnergySolutions* Clive facility. All actions will be performed in accordance with *EnergySolutions*' State-issued Part B Permit. The listed treatment technology in 40 CFR 268.40 for the D009 High Mercury-Organic Subcategory is either incineration (IMERC) or retorting/roasting for mercury recovery (RMERC). The listed treatment technology for the D009 High Mercury-Inorganic Subcategory and for U151 is RMERC. The need and justification for this action are as follows: The intent of the RMERC treatment process is to recover elemental mercury for recycling. However, radioactive mercury cannot be recycled and the RMERC process generates secondary waste (radioactive elemental mercury) which requires additional treatment by amalgamation (a stabilization technology) prior to disposal. The IMERC technology is also intended to be a mercury recovery technology where the waste is incinerated and the mercury recovered in the ash or in a specific off-gas control system. For radioactive mercury, both the ash and the control equipment/media will require further treatment. Furthermore, IMERC involves an extra handling step for the radioactive residue. Successful chemical stabilization of High Mercury-Inorganic Subcategory wastes has been demonstrated to achieve a measure of performance equivalent to the required methods which require two treatment methods (RMERC and stabilization) without detrimental effect to human health or the environment.

The U.S. Environmental Protection Agency (US EPA) has issued a Determination of Equivalent Treatment (DET) for these High Mercury Subcategory wastes that were chemically stabilized. In the EPA's determination, they concluded that for waste streams that are radioactive and contain mercury, the recovery portion of RMERC may not be appropriate and that alternative treatment processes should be pursued. The US EPA has reviewed the treatment of mercury-bearing waste in a Federal Register Notice (68 FR 4481). Mr. Orton also read language relevant this matter from the Federal Register. In this notice, the US EPA concluded that treatment of mercury waste is possible and it is suggested that stakeholders should use the site-specific treatment variance process to achieve approval for the treatment of high subcategory mercury wastes. The notice provides an example of when this would be appropriate as in the case of a high mercury subcategory waste that is also radioactive. 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

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feet of treated High Mercury Subcategory waste. This is the sixteenth time *EnergySolutions* has requested a variance on this type of waste. This is a one-time variance request that will be approved for one year. 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.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on April 2, 2019. The 30-day public comment period began April 2, 2019, and will end May 2, 2019.

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

X. Director's Report.

Ty Howard reviewed the "Summary of Passed Bills" during the 2019 Legislative session. The "Summary of Passed Bills" factsheet was provided in the Board's April 11, 2019 Board packet.

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

Due to the absenteeism of numerous Board members this agenda item was tabled.

XII. Other Business.

A. Misc. Information Items.

Ty Howard introduced Alma Rosas. Alma will replace Kaci McNeill in assisting with secretarial support duties for the Board. Kaci recently accepted the Archivist position in the Division.

B. Scheduling of next Board.

The next Board meeting will be held on May 9, 2019 at 1:30 p.m. at the Utah Department of Environmental Quality, located at 195 North 1950 West, SLC.

XIII. Adjourn.

The meeting adjourned at 1:55 p.m.