MINUTES
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
Utah Department of Environmental Quality
168 North 1950 West, Building #2, (Conf. Room 101), SLC, Utah

May 12, 2005

Board Members Present: Craig Anderson (Chair), John Newman (Vice-Chair), Scott Bruce, Carlton Christensen, Kory Coleman, William Doucette, Craig Forster, Gary Mossor, Kevin Murray, Dennis Riding.

Staff Members Present: Dennis Downs (Executive Secretary), Brad Johnson (Executive Secretary UST), Scott Anderson, Rusty Lundberg, Brad Maulding, Doug Taylor, Raymond Wixom.

Others Present: Dan Shrum, Keller Davis, Fred Nelson, Richard Rathbun, Clint Warby, Nels Johnson, Scott Reed, Wendy Lossie, Walton Levi, Elizabeth Lowes, Jason Reed, J. Carton, Mark Tyler, Wayne Christensen, Lowell Peterson, Scott Widmer.

I. The meeting was called to order at 1:10 p.m.

II. Introduction of new Board Members

The following new members of the Utah Solid and Hazardous Waste Control Board were introduced:

Gary Mossor has been appointed to replace Lowell Peterson. Mr. Mossor represents the hazardous waste industry on the Board. Mr. Mossor has been employed with Clean Harbors for approximately sixteen years. For the past two years, Mr. Mossor has been involved in the marketing aspect for Clean Harbors and has the responsibility for all the landfill assets within the organization in both the United States and Canada.

Kevin Murray has been appointed to replace Judy Lever. Mr. Murray represents the public on the Board. Mr. Murray is an Environmental Attorney with the law firm of Mabey and Murray. Mr. Murray practices environmental law. Prior to moving to Utah, Mr. Murray practiced environmental law in Texas from 1984-1991.

Dennis Riding has been appointed to replace Scott Widmer. Mr. Riding represents the fuels and manufacturing industry on the Board. Mr. Riding stated that for the past four years he has been employed as the Environmental Director for Maverik Country Stores, Inc. Prior to this position, Mr. Riding was employed in the environmental consulting industry for approximately thirteen years.

III. It was motioned by William Doucette and seconded by Kory Coleman and unanimously carried that the April 14, 2005, Board Meeting minutes be approved.

IV. Recognition of the outgoing Board Members

Craig Anderson recognized Lowell Peterson, (representing the hazardous waste industry) and Scott Widmer (representing the fuels and manufacturing industry) as outgoing Board Members. Both outgoing Members were presented plaques and letters of appreciation for their service on the Board.

Dennis Downs thanked Mr. Peterson and Mr. Widmer on behalf of the Division Staff, for their tremendous contributions to the Board and to the various programs. Mr. Downs stated that this particular Board was very instrumental in making substantial decisions and valuable suggestions on how the Division staff can improve. Mr. Downs also stated that major improvements have taken place on the Board level due to the efforts, suggestions, and recommendations of both Mr. Widmer and Mr. Peterson.

On behalf of the Board, Craig Anderson also thanked the outgoing members for the contributions, time and commitment to the Board.

V. Ethics Act and Conflicts of Interest for Board Members – Fred Nelson, Attorney General's Office

Dennis Downs introduced Mr. Nelson. Mr. Nelson is the Chief of the Environmental Division of the State Attorney General's office. Mr. Nelson's staff provides legal counsel to both the Board and the Division staff.

Mr. Nelson stated that Dianne Nielson had requested that he meet with each DEQ Board and provide information on ethics requirements and potential or actual conflicts of interest of Board members. Mr. Nelson stated that Boards are comprised of members who by statute are representatives of various interests and groups. As such, a balance needs to take place on each issue that each Board member addresses. In all matters, each Board member needs to determine if he should participate or recuse himself. The underlying premise of the Ethics Act is disclosure. Because Board members have various interests, disclosure needs to be provided. Mr. Nelson stated that Board members are to complete a Disclosure Statement and/or review their current one to ensure the information is accurate. (Information was provided in the Board members packet regarding the Ethics Act and Conflict of Interest, including the Disclosure Statement form to be filled out by Board members and notarized if applicable.)

Mr. Nelson reviewed a few prohibitions outlined in the requirements of the Ethics Act. Restrictions outlined in the Ethics Act include the following: No public officer shall: (1) improperly disclose or use controlled, private or protected information acquired, etc.; and (2) receive, take, seek, or solicit, directly or indirectly, for himself or another a gift of substantial value, etc. This does not apply to an occasional non-pecuniary gift, having a vale of not more than $50.

Mr. Nelson stated that Board members often have questions on what course of action to take if they do have a conflict of interest. Mr. Nelson stated that two general types of issues are brought before the Boards. Such as policy issues, rulemaking issues, questions that Board members are specifically asked to deal with. (On these issues it is expected that the Board members will promote the interests they are representing.) The Board is also an adjudicatory group and will deal with issues such as an appeal of a permit or a consideration of an appeal of a notice of violation. In these cases, Board members need to see if it is a direct conflict of interest in participating in voting. If Board members determine a conflict of interest exists, they should then recuse themselves. If a direct conflict of interest exists, the Board member should disclose it and then recuse themselves from participating and voting. However, it is not necessary to leave the Board room. The second process is that if Board members disclose the relevant information and state they can address the issue objectively and do not view it as a conflict of interest, they can participate and vote without recusing themselves. Mr. Nelson recommended that if a Board member needs to disclose information, it be done on the record orally, describing the direct conflict, so the general public is informed. Mr. Nelson recommended that all Board members read through the Utah Public Officers' and Employees' Ethics Act also provided in the Board packet. Mr. Nelson cautioned that if an action is taken and information is not disclosed, it may place in jeopardy the validity of the Board's decision. Mr. Nelson stated that if at any time Board members have concerns or questions to please contact him. (It was clarified that if Board members have previous filled out a Disclosure Statement they do not need to fill out a new one, unless the information provided is not current.)

VI. Underground Storage Tanks Update

Brad Johnson updated the Board members on the discussions currently taking place with the Utah Underground Storage Tank (UST) Advisory Task Force (Task Force) regarding the proposed rule changes for cleanup standards. These rules were sent to the various members of the Task Force, while the consultant community was notified of them as well. Copies of the proposed rules are available on the Division of Environmental Response and Remediation (DERR) webpage. The proposed rules will also be discussed in the next Task Force meeting, which is scheduled for May 25, 2005. The DERR has received some feedback regarding the rules, but not a substantial amount. Of the feedback received, the comments were relatively minor and were mostly supportive. However, one comment received suggested that the DERR should not put these cleanup standards into rule and should leave the program the way it is. Nevertheless, these proposed rules are still moving forward and the individual making this comment understood that fact. It is anticipated that after discussing these rules in the Task Force meeting, they will be brought before the Board in June for approval to go to official rule making.

Craig Anderson asked where the Task Force meeting will take place. Mr. Johnson informed the Board that the meeting will take place in Room 201 of DEQ Building #2 at 1:00 p.m.

Carlton Christensen inquired that if the July Board meeting were canceled, would it create a dilemma for the DERR in seeking approval for these rules to go to official rule making. Mr. Johnson stated that the DERR is striving to ensure that the rules will be presented to the Board in June, but that if they are not, it would not have a major impact due to the fact that the DERR is conducting business the same way as it has done before. The DERR is simply trying to take what it is actively doing now and put it into rule.

Mr. Johnson also informed the Board that currently, there is a federal energy bill that is going through Congress. The House of Representatives has recently approved it, and the Senate is currently working on a companion bill. This bill includes a number of provisions that could impact the UST Program. The majority of the provisions are not substantive for the State of Utah, but could cause problems for other states. Specifically, one provision requires every facility that has not been inspected since 1998 to be inspected within 2 years, and that all facilities within each state will be inspected every 3 years. This would not be a problem for the State of Utah as each facility is inspected annually. The biggest impact that it may have for the UST Program is that it does require that a program be put into place to ensure that tank operators are properly trained. The Board will be updated on this issue in the future as the bill progresses through Congress.

Mr. Christensen asked if this training would be done on-line, or through some other type of service. Mr. Johnson explained that if the bill is passed, the training would be streamlined and made to be as simple as possible. It would also be discussed with the Task Force in order to develop a suitable training.

VI. Hazardous Waste Facilities

Stipulation and Consent Order between the Board and Ensign Bickford Company (Informational Item)

Brad Maulding explained that a proposed Stipulation and Consent Order (SCO), No. 0503007, has been negotiated with the Ensign Bickford Company to resolve Notice of Violation and Order for Compliance (NOV/CO), No. 0412039, which was issued on February 2, 2005. The NOV/CO alleged the following: failure to label or mark containers of hazardous waste with the words “hazardous waste” and with dates of accumulation; failure to keep a written operating record on-site; and, failing to maintain a container of universal waste in a closed condition.

Copies of the NOV/CO, the penalty calculations and the proposed SCO were included with the Executive Summary in the Board information packet.

The SCO includes a penalty of $3,300.00. The public comment period began on April 21, 2005 and will end on May 20, 2005. Following the public comment period and resolution of any comments, it will be recommended that the Board approve the SCO.

Craig Anderson asked if all the alleged violations have been resolved. Mr. Maulding stated that the violations alleged in the NOV/CO and the proposed SCO have been resolved.

VII. Chemical Demilitarization

A. TOCDF Update - Marty Gray

TOCDF is continuing the processing of VX mines. In fact, recently a record number of 231 mines were processed during one shift. It is anticipated the destruction of the mines will be complete around the end of May or early June 2005.

Following completion of the VX mine campaign, two additional nerve agent campaigns will need to be completed. The first is VX hydrolysate that was generated during alternative technology testing at CAMDS. This agent will be processed through the metal parts furnace. Following the destruction of the VX hydrolysate, TOCDF will begin the process of destruction of the four-ton containers of GA in storage at DCD. The Division

has received a permit modification to process the GA agent at TOCDF. A public comment period will be held on this permit modification.

After the completion of the above agents, the focus will be on the change over to begin the processing of mustard agent. The final agent campaign for TOCDF will be the mustard campaign and processing of the secondary waste. Currently all the secondary waste that is generated at TOCDF is placed in storage igloos at DCD. The Division has received a permit modification to permit two vacant warehouses, which were formally used to store VX spray tanks, to consolidate/store the secondary waste containers. This consolidation is more efficient for TOCDF as it makes it easier to inspect, etc.

Status of other stockpile sites included the following: (1) Indiana has begun destroying their VX ton containers through a neutralization process. A hydrolysate is generated through the process. To, date no solutions have been determined on how to dispose of the hydrolysate. The plan was to ship the hydrolysate for waste water treatment, but that option has not yet been approved. (2) The funding to study relocating chemical weapons from stockpile sites where disposal facilities have not yet been built to existing disposal facilities has been put on hold. Those states (Pueblo, Colorado and Kentucky) where disposal facilities have not yet been built have now received some funding to proceed on the path to dispose of their chemical agents.

The Governor has postponed his tour of DCD and TOCDF.

Dennis Downs stated that he and Marty Gray recently attend the annual U.S. Army Environmental Forum held in Cincinnati, Ohio. The meeting focus was on updates of the chemical weapons disposal program. Mr. Downs stated he will continue to update the Board as new information is presented on this issue.

B. Dugway's Variance request, Landfill Cap Specifications (Informational Item) – David Larsen

David Larsen explained that Dugway has requested a variance to allow closure of a 20-acre landfill without construction of an engineered landfill cover (cap). Division staff have worked with Dugway and have come to an agreement on the proposal. The 45-day public comment period began on March 29, 2005 and has being extended to May 20, 2005. Also, a public hearing was held on May 5, 2005, at the Tooele County Courthouse. No comments were received.

Nels Johnson, Contractor for Dugway, and Scott Reed, Dugway's Project Manager, utilizing a power point presentation provided additional information on the variance request.
(A copy of the presentation is available with the meeting minutes.)

General information discussed regarding Dugway's variance request includes the following:
The site is referred to as HWMU 37. The site was ordered to be closed under a Consent Order to comply with interim status requirements. The site is a 20-acre landfill. The site operated from the early 1940's to the mid 1980's. The site served an industrial area at Dugway, primarily the dito-technical center. The site also took waste streams from other areas of Dugway. Extensive investigation has been undertaken to understand the subsurface geology/hydrogeology, nature and extent of contamination, groundwater quality, etc. Based on the results of the investigations, certain conditions exist at the site including the presence of CWM (chemical agent lab waste) and UXO (unexploded ordinances) . The need to tailor cleanups specific to site conditions was addressed previously and HWMU 37 is one of the sites conducive to this approach. Regulations, background information, results of the investigations, additional studies and assessments, and the proposed closure activities were presented. The site is in a high desert environment, where very little precipitation exists. The site is approximately 90 miles southwest of Salt Lake City. The site consists of over 1,200 sq. miles of area. Dugway is secure and secluded from the public and fencing exists around the boundaries. HWMU 37 is one of forty-one sites on Dugway addressed under a Consent Order in the early 1990's. HWMU 37 consists of trenches of various sizes where waste has been deposited. The trenches measure approximately 6 to 8 feet deep. Groundwater at this site is very shallow. The water table is at six feet below grade and therefore some of the waste is in contact with the groundwater. The waste stream is industrial in nature, including hazardous waste streams, chemical agent lab waste streams, as well as, unexploded ordinances waste streams. The Army conducted a safety analysis and determined that excavation of the waste is unsafe due to the nature of the waste streams present. Water sampling and soil sampling have been conducted. The subsurface is primarily clay with inter-bedded sand lenses. Ground water monitoring wells exist

on the site to monitor the water table zone, etc. Elevated levels of metals also exist. Cost analysis/savings were also addressed on the best way to close HWMU 37.

William Doucette requested clarification regarding metal concentrations. Mr. Johnson stated the main metal detected was lead. The lead level is elevated and may be deposited in the landfill. Mr. Johnson stated that copper, cadmium and chrome were also detected.

William Doucette asked about groundwater recharge given the low precipitation at the site. Mr. Doucette also stated that the groundwater level is fairly high for a low participation area. Mr. Johnson stated that the Bonneville Lake bed may be the source throughout the area. Mr. Mossor asked if most of the precipitation is accumulated during the winter months. Mr. Johnson stated that most of the water is accumulated during the winter months. Mr. Johnson also stated that a site-wide risk assessment was conducted.

Kevin Murray asked about the risk associated with unexploded ordinances sitting in ground water. Mr. Johnson stated that the risk assessment does not account for that. The risk assessment is for the risk associated with the chemicals being in the media.

Dennis Riding asked if the finding of no ecological risks are dependent on putting the cover in place. Mr. Johnson stated that a cover is needed.

Carlton Christensen asked about the chances of Dugway ending up on a BRAC list and what assurances does the State of Utah have that the site will be permanently secure. Mr. Johnson stated that this site is going to be closed under the current rules, including post-closure requirements, inspection requirements and land use controls, etc. This request is specifically for the variance for the performance specification of the soil cover.

Dennis Downs further stated that for facilities where waste is left in place, institutional controls are initiated. This ensures the protection of the site. The Federal Government has the liability and responsibility to ensure that the site remains protective of human health and the environment. Even if the base closed, the property, specifically the contaminated pieces of the property, would still have to be controlled, etc.

Craig Forster asked how much does this decision depend on the transport modeling and the integrity of the aquifer characterization. Mr. Johnson stated that transport modeling was used to evaluate metal contamination at a specific area within the landfill. Mr. Forster asked how many data points where used to determine the thickness of the aquatard. Mr. Johnson stated that approximately three at this site and about fifty within the Government Creek Valley.

Additional information can be obtained at http://www.hazardouswaste.utah.gov/CDS_PVA.htm

VIII. Other Business

A. Lead Acid Battery Disposal Law Update

(This issue was discussed at the last Board meeting.) Dennis Downs stated that the Lead Acid Battery Disposal law is up for review. The current statute will sunset on July 1, 2006. The Interim Committee on Health and Environment has done their review and has voted to recommend to the full Legislature that the Lead Acid Battery Disposal Law be continued for an additional ten years. This law, along with other laws that were also scheduled to sunset, will be introduced as a package to the legislature during the January 2006 Legislative Session for approval.

B. Logistics for the June Board Meeting to be held in Logan, Utah (Field trip to Nucor Steel and Board Meeting)

The tour of Nucor Steel will take place on June 9, 2005. Transportation will be provided. The anticipated schedule is as follows: **(8:00 a.m.)** Leave DEQ, Bldg. # 2 (where Board Mtgs. are held) and drive to Nucor Steel (Approx. 2 hours.); **(10:00 a.m.)** Tour Nucor Steel; **(12:00 p.m.)** Travel to Utah State University in Logan; **(1:00**

p.m.) Lunch at the Utah Water Research Laboratory (UWRL). Lunch will be provided; **(1:30 p.m.)** Utah Solid and Hazardous Waste Control Board Meeting held at UWRL

C. Scheduling of Board Meeting for July and August

Various Board members announced their preference and availability during July and August. Dennis Downs stated that at this point nothing is critical that needs to be addressed during either month. This item will be addressed again at the June meeting.

The next meeting was scheduled for June 9, 2005 at 1:30 p.m. in Logan, Utah in conjunction with a morning tour of the Nucor Steel Facility. The Board meeting is anticipated to take place at the Utah Water Research Laboratory (Utah State University).