

Utah Solid and Hazardous Waste Control Board Meeting
Utah Department of Environmental Quality (Bldg. #2)
168 North 1950 West (Room 101)
Meeting Minutes
March 12, 2009
1:30 p.m.

- PRESENT:** Carlton Christensen (Chair), John Newman (Vice Chair), Craig Anderson, Michael Brehm, Scott Bruce, Jeff Coombs, Ryan Dupont, Kevin Murray, Dennis Riding and Bill Sinclair.
- ABSENT:** Kory Coleman and Gary Mossor.
- STAFF:** Scott Anderson, Brad Johnson, Shane Bekkemellom, Ed Costomiris, Martin Gray, Arlene Lovato, Dale Marx, Terry Montgomery, Deborah Ng, Rick Page, Doug Taylor, Don Verbica, Otis Willoughby, and Raymond Wixom.
- OTHER:** Les Ashwood, John Bale, Marypat Buckman, Ben Clayton, Jason Hill, Garnett Hobson, Jeff Mensinger, Tim Orton, Roy Rose, Melissa Scales, Brent Stephens, Melissa Torsch, Kris Snow, Sheila Vance, Angela VanDam, and Shane Whitney.

I. Call to Order.

Carlton Christensen (Chair) called the meeting to order at 1:30 p.m. Kory Coleman and Gary Mossor were excused from the meeting.

II. Approval of Meeting Minutes for the February 12, 2009 Board Meeting (Board Action Item).

John Newman moved to approve the January 8, 2009 Board meeting minutes. The motion was seconded by Scott Bruce and **UNANIMOUSLY CARRIED.**

III. Underground Storage Tanks Update.

Brad Johnson updated the Board members on the current status of the Underground Storage Tank (UST) Owner/Operator Certification Program rules that the Division of Environmental Response and Remediation (Division) has been developing as a result of the Federal Energy Policy Act of 2005 (Energy Act). Recently, the Division sent a second draft of the rules to the Utah UST Advisory Task Force to review. No comments were received. Subsequently, the draft rules were sent to a broader group of stakeholders, including all UST owner/operators and all UST certified individuals. Feedback from this broader group of stakeholders is due April 1, 2009. It is anticipated that the Division will bring these rule changes before the Board in the April or May Board meeting and will request approval to proceed with the public comment period as part of the formal rulemaking process. According to the Energy Act, the deadline for individual states to have an owner/operator certification program operational is September 2009, with all owner/operators trained by the year 2012.

Mr. Johnson also informed the Board members that the cash balance of the Petroleum Storage Tank (PST) Fund is down from the previous month. The reason for this decline is that every year, individuals who do not participate in the PST Fund receive a refund. The PST Fund is structured so that every gallon of fuel that is sold in the State of Utah is subject to the ½ cent fee. At the end of the calendar year, owner/operators can then receive a refund if they have chosen to not participate in the PST Fund. Despite this decline in the cash balance, the Fund still has approximately 1.5 million dollars more than it did 12 months ago.

IV. Commercial/Federal Facilities Section.

A. *EnergySolutions* LLC request for a site-specific treatment variance for mixed waste requiring treatment with PCBs as an Underlying Hazardous Constituent (UHC) (Information Item).

Otis Willoughby presented *EnergySolutions*' request for a one-time, site-specific treatment variance from the Utah Hazardous Waste Management Rules.

Tim Orton, Environmental Engineer, *EnergySolutions*, explained that *EnergySolutions* plans to receive and process 227 cubic feet of waste containing cadmium (D006) and Polychlorinated Biphenyls (PCBs) and dispose of the treated residue in the *EnergySolutions* Clive Facility Mixed Waste Landfill Cell.

Through treatability studies performed at the site, *EnergySolutions* has confirmed successful treatment below the treatment standards for all contaminants except PCBs. The PCB treatment standard is not attainable using current chemical treatment technologies. If this waste did not carry the D006 code (contained only PCBs at these levels), then *EnergySolutions* would be permitted to dispose of the waste without further treatment.

A similar variance request for this same waste stream was approved by the Board in June 2007. This is an informational item only. A public comment period on this variance request began on March 3, 2009, and will end on April 2, 2009. A public hearing to receive comment on the variance request will be held on Thursday March 19, 2009, at 7:00 p.m. in the Tooele County Court House. After any comments are addressed, the request will be presented to the Board for consideration at its next meeting.

Otis Willoughby provided and discussed a chart titled "Land Disposal Restriction Requirements for Waste Containing Mercury." Variance requests presented in February for Clean Harbors and *EnergySolutions* had created some confusion regarding treatment standards for the mercury. Mr. Willoughby explained that there are two methods utilized to meet the land disposal restrictions.

(1) Either the waste needs to meet a numerical treatment standard or (2) it needs to go through a specified treatment process.

In the case of waste containing high subcategory mercury, specifically > 260 ppm, the waste is required to go through incineration or RTOC where the mercury is recovered for recycling. The residue of that waste is required to meet the 0.2 ppm treatment standard prior to disposal.

In the case of waste containing low subcategory mercury, it is required to go through an approved "Treatment Process." The residue of that waste is required to meet the 0.025 ppm treatment standard prior to disposal.

Mr. Willoughby clarified that when a facility requests a variance, they can request whatever value they want, including no treatment at all or some other standard.

In the case of *EnergySolutions*, because the waste is radioactive and will not be recovered, a treatment process is utilized to achieve 0.2 ppm standard. Most of *EnergySolutions*' waste is well below this numerical value.

Ed Costomiris explained that Grassy Mountain's site-specific treatment variance request deals with a

caustic waste stream that cannot be retorted. Therefore Grassy Mountain is seeking a variance to stabilize the waste prior to disposal in a landfill cell. The waste will be treated to the .025 ppm level.

B. EnergySolutions LLC request for a site-specific treatment variance for waste codes D009 and U151 (High Mercury – Subcategory Inorganic) (Board Action Item).

Otis Willoughby discussed EnergySolutions' request for renewal of a one-time, site-specific treatment variance from the Utah Hazardous Waste Management Rules to stabilize a waste stream that carries waste code D009 or U151 (High Mercury – Subcategory Inorganic). The treated waste will be disposed at the Mixed Waste Landfill Cell.

The EnergySolutions Mixed Waste Facility proposes to receive waste streams from generators that carry the listed waste codes for High Subcategory mercury. The waste that may be shipped over the next year has a volume of approximately 2500 cubic feet. The technology-based treatment codes for this material are either IMERC (incineration followed by recovery) or RMERC (roasting/retort followed by recovery). The RMERC and IMERC processes generate secondary waste streams. The secondary waste streams (when greater than 260 mg/kg mercury) require further stabilization to a level of .2 mg/L based on the toxicity characteristic leaching procedure (TCLP) in SW846.

EnergySolutions is proposing to treat the waste directly with a stabilization method rather than going through the initial retort or incineration of the waste. This proposal is due to the mixed waste nature of the waste stream, i.e., a hazardous waste with a radioactive component. The hardship for this case is that radioactive mercury cannot be recycled and would require extra handling of the waste.

The USEPA has issued a Determination of Equivalent Treatment (DET) for such High Mercury Subcategory wastes. In its determination, the USEPA concluded that, for wastes that contain mercury and are radioactive, the recovery portion of RMERC or IMERC may not be appropriate and that alternative treatment processes should be pursued.

EnergySolutions is proposing to stabilize the waste to a level below 0.2 mg/L, based on the TCLP method. This would satisfy the high mercury subcategory requirement. In addition, LDR compliance will be met for all other waste codes associated with the waste prior to disposal.

This variance, if granted, would be valid for the 2009 calendar year. EnergySolutions has requested similar one-time site-specific treatment variances for High Subcategory Mercury. The Board approved those requests in January 2002, December 2003, June 2004, January 2005, January 2006, January 2007, and March 2008.

A public hearing to receive comment on the variance was held on February 26, 2009, and no comments were received. The Executive Secretary recommends approval of this variance request based on the findings.

It was motioned by John Newman and seconded by Ryan Dupont and unanimously carried to approve EnergySolutions LLC request for a site-specific treatment variance for waste codes D009 and U151 (High Mercury – Subcategory Inorganic).

C. Clean Harbors Grassy Mountain, LLC request for a site-specific treatment variance for waste codes D009 (Board Action Item).

Ed Costomiris discussed Clean Harbors Grassy Mountain's request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. The Grassy Mountain Facility seeks authorization

to stabilize a waste stream that carries waste code D009 (High Mercury – Subcategory Inorganic). The treated waste will then be disposed in a hazardous waste cell at the facility.

The Grassy Mountain Facility proposes to stabilize and dispose of two mercury waste streams from the Clean Harbors Aragonite Facility that carries the listed waste codes for High Mercury-Inorganic Subcategory. Both waste streams, profile numbers GM91-2669-HIHG and PCUUB-004-A, were generated from the air pollution control system at the Aragonite Facility.

The technology-based treatment code for this material is RMERC (roasting/retort followed by recovery). The RMERC process generates secondary waste streams. The secondary waste streams (when greater than 260 mg/kg mercury) require further stabilization to a level of 0.20 mg/L. However, a portion of the waste stream is not greater than 260 mg kg total mercury and the Grassy Mountain Facility proposes to treat all of the waste to the Low Mercury standard of 0.025 mg/L, based on the toxicity characteristic leaching procedure (TCLP) in SW846. In addition, LDR compliance will be met with all other waste codes associated with the waste prior to disposal.

The Grassy Mountain Facility is proposing to treat the waste directly with a stabilization method rather than going through the initial retort or incineration of the waste. This proposal is made due to the corrosive nature of the waste stream, which is damaging to the equipment at the recovery facility and their declination to receive the waste. The hardship for Clean Harbors is that there currently is no alternative way for the company to dispose of this waste.

The Grassy Mountain Facility has conducted a treatability study on the waste stream. The formula developed for treating this waste stream resulted in no mercury being detected following treatment.

A 30-day public comment period was held from February 5, 2009 and concluded on March 9, 2009. A public hearing was held on February 17, 2009. No comments were received. This variance, if granted, would be valid for the 2009 calendar year. The Executive Secretary recommends approval of this request based on the following findings: the proposed treatment method meets the regulatory basis for a variance, and will be as protective to human health and the environment as the required method.

It was motioned by Dennis Riding and seconded by Craig Anderson and unanimously carried to approve Clean Harbors Grassy Mountain, LLC request for a site-specific treatment variance for waste codes D009.

V. Solid Waste Section.

A. Approval to proceed with rulemaking and 30-day public comment period for proposed solid waste rule changes, Rule R315-315 (Board Action Item).

Ralph Bohn, Solid Waste Section Manager, presented proposed changes to the Solid Waste Rules that deal with special wastes (R315-315). Mr. Bohn stated that Board approval is required to send the proposed rules to the Division of Administrative Rules for publication in the State Bulletin. Publication will start the required 30-day public comment period. Following the comment period, the proposed rule changes will again be brought back to the Board for final approval.

Michael Brehm asked what prompted the proposed rule changes. Mr. Bohn stated that the proposed rule changes will bring the Solid Waste Rules in line with other Department rules regarding the term used for asbestos, will allow disposal facilities more discretion in the management of some waste streams, and will allow PCB-containing capacitors from all types of equipment, not just fluorescent lights, to be disposed in solid waste facilities. Dennis Riding requested clarification regarding the specific petroleum

contaminated soils that will be addressed in the rule changes. Mr. Bohn stated that no specific changes are being made to R315-315-8, instead references to definitions are being changed.

It was motioned by Jeff Coombs and seconded by Michael Brehm and unanimously carried to proceed with rulemaking and 30-day public comment period for proposed solid waste rule changes, Rule R315-315).

VI. Chemical Demilitarization.

A. TOCDF Update.

Marty Gray noted that the TOCDF has reached a major milestone in completing 50% destruction of the mustard stockpile. TOCDF continues to make good progress on installation of the carbon filters for the pollution abatement system. The filter installation is scheduled to be completed and permitted in September, after which the high mercury ton containers can be processed. In the meantime, TOCDF will continue to process the low mercury ton containers.

Currently, two operational plans are out for public comment. (1) Use of an autoclave for treating secondary waste at TOCDF and (2) the Explosive Destruction System for destroying the munitions at Dugway Proving Ground that are currently in storage.

John Newman asked if the mustard ton containers were included in the treaty to dispose of all the chemical agents stored at the various facilities in the US. Mr. Gray explained that the Chemical Weapon Treaty does include disposal of all mustard ton containers at TOCDF. Mr. Newman asked if any information is available on where the US ranks among other members (countries) who are part of treaty.

TOCDF representatives were present at the meeting and will provide information at the next Board meeting on the progress of the other countries involved in the treaty. The five incineration sites in the US will finish destruction of chemical agent in early 2012. The Chemical Weapon Treaty date for destruction of all chemical agent is April 2012. The two neutralization sites (Kentucky and Pueblo), will not meet this timeframe. TOCDF's current schedule shows destruction of its stockpile of chemical agent by the treaty deadline.

B. Stipulation and Consent Order between the Board and Dugway Proving Ground (Board Action Item).

Doug Taylor discussed the proposed Stipulation and Consent Order (SCO) to resolve Notice of Violation and Order for Compliance (NOV/CO) issued to Dugway Proving Ground on January 29, 2008.

The Division staff conducted Compliance Evaluation Inspections at Dugway from August 20, 2007 to September 25, 2007. Findings documented during these inspections led to issuance of the NOV/CO. Violations alleged in the NOV/CO include failure to follow approved plans while removing waste from SWMUs, failure to submit data to the Executive Secretary, and failure to notify the Executive Secretary about pending field work. The SCO also orders Dugway to modify its permit. Once approved, these modifications will assist Dugway in improving its hazardous waste management practices. The SCO also includes a penalty of \$5,890.00 dollars.

The public comment period for this SCO began February 3, 2009 and ended on March 5, 2009. No comments were received.

Michael Brehm asked about the amnesty program at Dugway. Mr. Taylor explained that some defense department facilities have a program where individuals employed at the facility can turn in small munitions they have acquired without any explanation. Mr. Brehm asked if there is a history of uncontrolled munitions at the site and if the program includes anything other than the small munitions. Mr. Taylor stated that Dugway recognizes that individuals may pick things up from the ranges or other locations over the years and has instituted the amnesty program as a way to control these types of munitions.

Mr. Brehm noted that the NOV/CO documented a failure to provide drilling records. Mr. Brehm asked if the driller should have been required to submit documentation or was it a shared responsibility between the facility and the driller. Mr. Taylor stated that Dugway does utilize contractors to perform the drilling. However, Dugway's permit requires the Permittee (Dugway) to submit the information. Mr. Brehm asked why the information was not submitted within the 180-day time frame. Mr. Taylor opined that facility personnel overlooked the deadline as a number of wells were being installed and data was being collected at the time. Mr. Taylor clarified that all required data has been submitted.

It was motioned by Bill Sinclair and seconded by Michael Brehm and unanimously carried to approve Stipulation and Consent Order (SCO) No. 0808026 between the Board and Dugway Proving Ground to resolve Notices of Violation No. 0711027.

VII. Other Business.

A. Legislative Update.

Scott Anderson provided a list of proposed legislation with potential impacts on solid and hazardous waste programs.

SJR 4 (McCoy) Recycling of Electronic Waste

This joint resolution of the Legislature urges the Utah Department of Environmental Quality to work with the Recycling Coalition of Utah to develop recommendations for addressing electronic waste and to encourage Utahns to reduce electronic waste and reuse or recycle electronic items. The Legislature also urges the Utah Department of Environmental Quality to continue working with the Coalition's Electronic Scrap Steering Committee and other interested stakeholders to assess electronic waste issues in the state and to report its findings and recommendations to the Natural Resources, Agriculture, and Environment Interim Committee by October 31, 2009. This bill has passed.

SB 70 (Dayton) Department of Environmental Quality Amendments

Raymond Wixom, Utah Attorney General's Office, explained that this bill amends provisions relating to adjudicative proceedings within the Department of Environmental Quality. This bill deals with the following: defines terms; authorizes the Executive Director of the Department of Environmental Quality to appoint an administrative law judge; requires an administrative law judge to conduct all adjudicative proceedings within UDEQ, except an emergency adjudicative proceeding; establishes powers, duties, and qualifications for an administrative law judge; amends or repeals the powers of boards within the department regarding hearings, adjudicative proceedings, and hearing officers or examiners. This bill has passed both houses.

SB 143 (Killpack) Sunset Act and Repealers Reauthorizations

This bill reauthorizes certain state statutes and programs that would otherwise sunset before the 2010 Annual General Session of the Utah Legislature. This reauthorization includes the Solid and Hazardous Waste Act and the Used Oil Management Act. This bill has passed.

SB 224 (Bramble) Reuse of Industrial ByProduct

This bill enacts provisions relating to the reuse of an industrial byproduct. This bill defines terms, authorizes the Solid and Hazardous Waste Control Board to make rules, authorizes the Executive Secretary to receive reports from the Department of Transportation and receive and act upon an application for reuse of an industrial byproduct, and requires the Department of Transportation to allow and encourage the reuse of an industrial byproduct in the construction of department projects, consider applying a preference for the reuse of an industrial byproduct in certain circumstances, and submit reports to the Executive Secretary. This bill has passed the Senate, not the House.

HB 147 (Cosgrove) Resource Recovery by Governmental Entities

This bill requires certain state and local governmental entities to recycle certain materials. This bill defines terms and requires a first or second class county and a state or municipal agency located in a first or second class county to recycle certain materials. This bill will likely not pass.

HB 316 (Wimmer) Time Limitations for Prosecution of Environmental Crimes

This bill modifies the Criminal Code regarding the time limitation on prosecution of environmental crimes. This bill requires that a prosecution for a violation of Title 19, Environmental Quality Code, shall be commenced within four years after facts constituting the violation have been reported in writing to a prosecutor having responsibility and jurisdiction to prosecute the offense. This bill has passed the House only.

HB 321 (Harper) State Agency Structure Task Force

This bill creates the State Agency Structure Task Force and specifies its membership and duties. This bill requires the Task Force to review the organization and management of state agencies and make recommendations to improve efficiency, effectiveness, and the state agencies' missions by identifying workable and cost-effective alternatives; establishes task force membership, duties, and salaries and designates staff for the task force; and requires that the task force present a final report to the Legislative Management Committee. This bill is being held and will be part of an interim study for the next year.

HB 322 (Hendrickson) Tire Recycling Fee Modifications

This bill makes technical corrections and increases the waste tire recycling fee for certain tires from \$1 to \$2 (specifically larger semi-truck tires only). The waste tire restricted account continues to decrease. To keep the fund viable, the fees need to be increased. The waste tire restricted account pays for assistance in cleaning up waste tire piles around the state, as well as reimburses tire recyclers. This bill has passed the House only.

HB 434 (Edwards) Amendments to Department of Environmental Quality

This bill amends provisions relating to the authority of the Department of Environmental Quality. This bill adds two members to the Air Quality Board, updates the chapters for which a division is responsible to administer, gives a title name to a part and makes technical changes. This bill is being held and will be part of an interim study for the next year.

Mr. Johnson then provided the Board with an update on three Legislative Bills.

House Bill (HB) 368 – Underground Storage Tank Amendments, sponsored by Representative Kay McIff. This Bill proposes to increase the coverage limit of the PST Fund to two million dollars and to provide funding to 3rd parties to review investigation and cleanup work at Leaking Underground Storage

Tank (LUST) sites and was finally introduced with language. The bill has since stalled and never went to a Committee for review. It is unlikely that this Bill will pass.

HB404 – Disclosure of Real Property / Methamphetamine Contamination, sponsored by Representative Merlynn Newbold. This Bill, which addressed the disclosure of real property that is contaminated by methamphetamine, passed the House of Representative, but is currently in the Rules Committee of the Senate. At this time, it is unknown if this Bill will pass both Houses.

Senate Bill 132 – Income Tax Contribution for Methamphetamine Housing Reconstruction and Rehabilitation Fund, sponsored by Senator Karen Mayne. This Bill allows individual tax payers the choice of checking a box on their income tax return and donating money to a fund that would be used to purchase or cleanup properties that are contaminated with methamphetamine. The bill passed the Senate and is also sitting in the Rules Committee. However, as with the other two proposed Bills, it is unlikely that this Bill will pass before the Legislative Session comes to an end.

B. Budget Update.

Bill Sinclair stated that this has been a very challenging year for all state agencies in dealing with their budget issues. UDEQ has been through approximately three budget cycles in FY2009, with cuts totaling approximately 12%. Also, it is anticipated that for the FY10 budget, the Department will take another 9% cut in general fund money. To meet the budget cuts, the Department has had a number of vacant positions that have now been eliminated. However, there is the potential that staff members will be laid off or be transferred to a new position within UDEQ. Others may seek employment in the private sector.

Mr. Sinclair stated that the UDEQ was able to increase the hourly plan review fee from \$70 to \$90 per hour. The UDEQ has also been the recipient of some stimulus money. EPA will appropriate money for UDEQ for projects. The UDEQ also expects to receive money for the Air Quality program.

Mr. Johnson added that it is anticipated that the Division of Environmental Response and Remediation will receive approximately two million dollars from the Environmental Protection Agency (EPA) through the Stimulus Bill to complete cleanups of LUST sites. It is projected that this money will remediate somewhere between eight to ten sites and will be made available in the next few weeks. In the meantime, the EPA is currently preparing guidance that will be distributed to individual states in the near future.

Carlton Christensen asked how the various LUST sites that will be cleaned up with this stimulus money will be selected and if owner/operators would somehow be rewarded for not being more responsible for their cleanups. Mr. Johnson explained that when a release occurs, the Division always pursues responsible parties through enforcement action first to ensure that their facilities are remediated. When owner/operators are unwilling or unable to cleanup their sites due to extremely limited assets or resources, the sites are prioritized and federal or state money is utilized to remediate them. The facilities that are remediated with this stimulus money will be selected from this priority list.

VIII. Election of Board Chairman and Vice-Chairman (Board Action Item).

Carlton Christensen thanked the Board for allowing him to serve as the Board Chairman. Mr. Christensen made one recommendation to the Board that the new chairman declare/adhere to the policy that the Board Chairman serve no more than two consecutive years.

Michael Brehm moved to approve the appointment of John Newman as the new Board Chairman. The motion was seconded by Scott Bruce and UNANIMOUSLY CARRIED.

John Newman moved to approve the appointment of Michael Brehm as the Board's new Vice-Chairman. The motion was seconded by Dennis Riding and UNANIMOUSLY CARRIED.

IX. Scheduling of next Meeting.

The next Board meeting will be held on April 9, 2009 at 1:30 p.m., in the Utah Department of Environmental Quality, (Conference Room 101), located at 168 North 1950 West, (Bldg. #2), SLC.

X. Adjourn

The meeting adjourned at 2:17 p.m.