

Utah Solid and Hazardous Waste Control Board Meeting
Utah Department of Environmental Quality (Bldg. #2)
168 North 1950 West (Room 101)
SLC, Utah

Meeting Minutes
June 11, 2009
1:30 p.m.

PRESENT: John Newman (Chair), Michael Brehm (Vice Chair), Craig Anderson, Scott Bruce, Carlton Christensen, Jeff Coombs, Ryan Dupont, Dennis Riding, and Amanda Smith.

ABSENT: Kory Coleman, Gary Mossor, and Kevin Murray.

STAFF: Dennis Downs, Brad Johnson, Scott Anderson, Shane Bekkemellom, Marty Gray, Dale Marx, Terry Montgomery, Allan Moore, Cheryl Prawl, and Doug Taylor.

OTHERS: Jeff Mensinger, David Gibby, Becki Bryant, Tim Orton, Wendy Lessig, and Christopher Thomas.

I. Call to Order.

John Newman (Chair) called the meeting to order at 1:35 p.m. Gary Mossor, Kevin Murray, and Arlene Lovato (Secretary for the Board) were excused from the meeting.

II. Introduction of Amanda Smith, new Acting Executive Director for UDEQ.

Dennis Downs introduced Amanda Smith, who was appointed by Governor Jon Huntsman as Acting Executive Director for UDEQ. Ms. Smith's appointment is subject to Senate confirmation. The position has been unfilled since Rick Sprott retired in December. Ms. Smith stated she is excited and is looking forward to working with the Board. She previously worked as Legislative Director for Governor Huntsman. Her role in the Governor's office included working on critical issues like energy development, rural affairs, and water and public lands. She also previously worked as the Government Relations Director for The Nature Conservancy District.

III. Introduction of new Board members.

Although absent due to scheduling conflicts, Dennis Downs introduced the two new Board members. Commissioner Larry Ellertson, Utah County Commissioner, will be filling the position of county government begin vacated by Craig Anderson. Brad Mertz, Director, Recycling Coalition of Utah, will be filling the position of general public/environmental interests which was vacated because of the unfortunate death of Craig Forster.

IV. Acknowledgement of out-going Board member, Craig Anderson.

John Newman presented a plaque to Craig Anderson in recognition of his many years of service on the Board. Mr. Anderson has served on the Board since 2001. Mr. Anderson stated he has enjoyed being on the Board and has learned a lot and has appreciated working with everyone on the Board. He has also enjoyed the many years of association with the Division staff and has appreciated and respects the knowledge and technical ability that each of the staff members possess and hopes to continue those associations in the future.

John Newman also presented a plaque to Mr. Anderson in recognition of the time he served as the Board Chairman. At the beginning of his election, as a way of rotating Board Chairs, Board members agreed that the Board Chairman would serve only two years. However, Mr. Anderson was asked by the Board to serve longer than two years. He served as Board Chairman from 2004 – 2007. Board members thanked Mr. Anderson for his wonderful example of leadership.

V. Recognition of past Board Chairman (Carlton Christensen).

John Newman also presented a plaque to Carlton Christensen in recognition of his service as Board Chairman from 2007 - 2009. Mr. Christensen was also thanked by the Board for his wonderful example of leadership.

VI. Approval of Meeting Minutes for the May 14, 2009 Board Meeting (Board Action Item).

Carlton Christensen moved to approve the May 14, 2009 Board meeting minutes. The motion was seconded by Ryan Dupont and **UNANIMOUSLY CARRIED.**

Note: Michael Brehm noted that although he was not present at the May meeting, he wanted it documented that he concurs with the following statement:

[Page 5, 2nd Paragraph] “Kevin Murray recommended that, in the future, all POTWs be notified if a disposal of used oil occurs at their facilities so they can take appropriate precautions.”

Mr. Brehm further stated that in his position of representing the professional engineer industry, he believes that notifying a POTW in the instance of a spill to their system is needed and should be required.

VII. Underground Storage Tanks Update.

Brad Johnson provided an update to the Board members on the following four items:

- The public comment period for the Owner/Operator Certification Rules that the Board previously approved will begin on June 15, 2009, and will end on July 15, 2009. The Division of Environmental Response and Remediation (Division) will hold public meetings throughout the State in Salt Lake City, Cedar City, Logan, Moab, and Vernal, in order to give all owner/operators a better opportunity to provide comments on the proposed rules. After these public meetings are held, it is the hope of the Division to resolve any issues that are brought up in order to bring the rules back before the Board in the August meeting to seek final approval. This will allow the Division to meet the September deadline that the Environmental Protection Agency (EPA) has established for adoption of the rules.
- The Division applied for approximately \$2 million from the American Recovery and Investment Act approved by Congress. The funding will be used for the cleanup of leaking underground storage tank sites where the owner/operator is unwilling or unable to complete the cleanup work. The Division has also received guidance from the EPA on the implementation requirements that must be completed in order for the Division to receive the money. The requirements include keeping track of the money spent on each individual site. The State of Utah will receive a total of 1.4 billion dollars from this stimulus package, with a lot of the money going to the Department of Transportation, the Department of Health, and the Board of Education. The Department of Environmental Quality will receive approximately 40 million dollars, with most of it being used in its Water Programs’ revolving loan funds.
- The cash balance for the Petroleum Storage Tank (PST) Trust Fund decreased in April 2009. Since December 2008, the cash balance has declined by approximately \$900,000.00. This decrease was primarily due to an owner/operator, who does not participate in the PST Trust Fund, seeking a refund from the State Tax Commission on the ½ cent surcharge that is collected on every gallon of fuel sold within the State. This owner/operator had not collected their refund for the last 4 years. Despite this decline, the cash balance is still more than it was a year ago.
- The cleanup work at the Gunnison Top-Stop facility is still progressing. Based on the data submitted to the Division, the concentrations of contaminants in the groundwater are continuing to decline. However, there are still 3 properties that currently have vapor issues that the Division is endeavoring to deal with. Also, the lawsuits that have been filed regarding this release are still continuing as settlements have not been reached.

Carlton Christensen asked that having reached the million dollar deductible for this release from the PST Trust Fund, is there any indication on what the continued cleanup cost will be for Top Stop. Mr.

Johnson explained that once the million dollar deductible is reached, responsible parties do not share that type of financial information with the Division.

Jeff Coombs then questioned if the State has been named in any of the lawsuits currently filed by individuals affected by this release. Mr. Johnson answered in the negative.

Scott Bruce asked if the Division tracks when various owner/operators seek the refund from the State Tax Commission, such as the case with the owner/operator that wasn't participating in the PST Trust Fund that collected their refund for the last 4 years. Mr. Johnson stated that due to this circumstance, the Division researched this issue and it appears that another situation like this is unlikely to occur again. However, the Division does not actively track this type of information.

VIII. Used Oil Section.

A. Approval of proposed changes to the Used Oil Rules R315-15-13.6 (b) (Board Action Item)

Cheryl Prawl reviewed the proposed changes to the Used Oil Management Rules, R315-15-13, and requested the Board authorize initiation of the formal rulemaking process. The proposed rule changes will be filed with the Division of Administrative Rules for publication in the Utah State Bulletin and commencement of the 30-day public comment period.

The purpose of the proposed rule changes is to allow permitted hazardous waste incinerators to burn off-specification used oil without the need to also obtain a separate used oil off-specification burner permit under R315-15-13.6(b) of the Utah Used Oil Management Rules.

Ms. Prawl further explained that, currently, there is one commercial hazardous waste incinerator operating in Utah, and the requirements for permitting and operation of this incinerator are as stringent as the Used Oil Management Rules and permitting requirements. Also, Division personnel inspect this facility on a regular basis to ensure compliance with the hazardous waste permit. Therefore, this proposed rule would eliminate the need for a separate used oil permit (if certain conditions are met), and would reduce the redundant inspections and requirements already covered by the hazardous waste permit.

The Used Oil Management Rules cover the permitting of used oil facilities and the proper management and recycling of used oil in the state. Specifically, R315-15-6 contains standards for used oil facilities which burn on-specification and off-specification used oil for energy recovery. R315-15-6.2 specifies that off-specification used oil may only be burned for energy recovery in certain devices, such as hazardous waste incinerators. In addition, R315-15-13.6(b) requires facilities which burn off-specification used oil to apply for and receive a permit from the Executive Secretary prior to burning off-specification used oil.

Michael Brehm asked if this rule change is a nationwide "groundbreaking" rule change. Ms. Prawl stated that the federal rules do not require permits, but Utah's Used Oil Management Act does require them. Currently, there are only six or seven states nationwide that require permits. Carlton Christensen asked how many hazardous waste incinerator facilities would be eligible if the rule was changed. Ms. Prawl anticipates that only one facility would benefit from the proposed change. Michael Brehm asked if this rule change would have had value retrospectively on other used oil agenda items recently brought before the Board. Ms. Prawl stated no, as no issues have been addressed regarding any hazardous waste incinerators.

It was motioned by Jeff Coombs and seconded by Dennis Riding and unanimously carried to proceed with rulemaking and 30-day public comment period for proposed changes to the Used Oil Rules R315-15-13.6 (b).

B. Stipulation and Consent Order between the Board and Pacific West (Board Action Item).

Cheryl Prawl reviewed the proposed Stipulation and Consent Order (SCO) between the Board and Pacific West, LLC to resolve Notice of Violation (NOV) and Order for Compliance No. 0807023. Pacific West is an

emergency response contractor and a used oil transporter (acquired after NOV). Pacific West operates a petroleum-contaminated soil recycling process at its facility in Erda, Utah.

Findings documented during a used transformer oil spill cleanup led to the issuance of the NOV on August 28, 2008. The NOV included the following violations: transportation of TSCA off-specification used oil without a used oil transporter permit; storage of TSCA off-specification used oil for greater than 24 hours without a used oil transfer facility permit; and, disposal of TSCA off-specification used oil in a sanitary sewer and publicly-owned treatment works system.

To resolve the NOV, a proposed SCO has been negotiated with Pacific West. Under its terms, Pacific West will pay a penalty of \$9,896.00 in quarterly installments within one year of the effective date.

A 30-day public comment period on the proposed SCO was held from April 27, 2009 to May 26, 2009. No public comments were received. Based on the findings noted above, the Division recommends the Board approve the proposed SCO.

Jeff Coombs asked if the facility has rectified the problems so they will not occur again. Ms. Prawl stated that the company has obtained its Used Oil Transfer Permit, has thoroughly trained its staff and is taking the necessary steps to ensure this does not happen again.

It was motioned by Carlton Christensen and seconded by Michael Brehm and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order (SCO) No. 0810035 between the Board and Pacific West, LLC. to resolve Notice of Violation and Order for Compliance No. 0807023, based on the findings of the staff reports.

C. Stipulation and Consent Order between the Board and Thermo Fluids, Inc. (Board Action Item).

Cheryl Prawl reviewed the proposed Stipulation and Consent Order (SCO) between the Board and Thermo Fluids, Inc. to resolve (two) 2 Notices of Violations (NOVs). The first was issued on August 26, 2008 (NOV No. 0806015) and the second was issued on August 28, 2008 (NOV No. 0806014). Thermo Fluids is a used oil transporter, processor, and marketer with offices located in Salt Lake City, Utah.

Findings documented by Division inspectors in April 2008 led to the issuance of NOV No. 0806014 on August 28, 2008. The NOV included the following violations: storage of TSCA off-specification used oil in tanks not permitted for storage of that material; blending of TSCA off-specification used oil with other used oil to create on-specification used oil; and, marketing of TSCA off-specification used oil to used oil burners instead of appropriately-permitted TSCA facilities.

Findings documented by Division inspections in April 2008 led to the issuance of NOV No. 0806015 on August 26, 2008. The NOV included the following violations: operation of an un-permitted used oil transfer facility at a rail spur; failure to provide secondary containment for used oil storage and loading at the un-permitted rail spur; failure to properly label its trucks and rail cars at the rail spur; and failure to follow its railcar loading procedures as part of its used oil transporter permit.

To resolve the two NOVs, a proposed SCO has been negotiated with Thermo Fluids. Under its terms, Thermo Fluids will pay a penalty of \$30,124.00 within 30 days of the effective date of the SCO.

A 30-day public comment period on the proposed SCO was held from May 12, 2009 to June 10, 2009. No public comments were received. Based on the findings noted above, the Division recommends the Board approve the proposed SCO.

Michael Brehm requested clarification on how the violations were discovered at the rail spur. Ms. Prawl explained that a competitor had complained and the Used Oil staff followed up on the complaint and found the operation of an un-permitted used oil transfer facility at the rail spur.

Mr. Brehm stated that every time a violation is not self-reported by a facility, it indicates a programmatic problem and/or other concerns that need to be addressed, and he questioned if the facility has remedied its internal concerns/problems. Ms. Prawl agreed that dealing with the rail spur/rail cars is a concern because the 24-hour deadline needs to be adhered to. Thermo Fluids has now applied for and is currently working on getting a transfer facility permit.

Carlton Christensen asked if there is anything different Thermo Fluids needs to do to comply with the regulations, absent a permit. Ms. Prawl explained that facilities can load and unload at any rail site as long as used oil is not stored for longer than 24 hours, otherwise certain requirements must be met.

Jeff Coombs asked if the company was effective in retrieving the TSCA off-specification used oil marketed to used oil burners. Mr. Coombs was concerned for the companies that were burning it. Ms. Prawl was unaware if these companies were notified of the issue, because at that point, due to the blending, the PCBs were undetectable in the oil. Ms. Prawl also clarified that the used oil burners who received the oil, did indeed burn the oil.

It was motioned by Scott Bruce and seconded by Jeff Coombs and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order (SCO) No. 0810036 between the Board and Thermo Fluids to resolve Notice of Violations and Order for Compliance No. 0806015 and No. 0806014.

IX. Hazardous Waste Management.

A. Stipulation and Consent Order between the Board and Ogden Chrome (Board Action Item).

Allan Moore reviewed the proposed Stipulation and Consent Order (SCO) No. 0901001 between the Board and Ogden Chrome to resolve Notice of Violation (NOV) No. 0809034 issued to Ogden Chrome on November 19, 2008 for violations of the Utah Hazardous Waste Management Rules.

On June 4, 2008, a routine compliance evaluation inspection was conducted at the Ogden Chrome Facility located in Ogden, Utah. During the inspection, Division inspectors noted waste that had not been characterized, storage of hazardous waste over 90 days, open and unlabeled containers, no weekly inspections and no hazardous waste training or emergency plans.

All violations have been corrected. The SCO includes a penalty of \$7,000.00.

The public comment period for this SCO began on May 1, 2009 and ended on June 1, 2009. No comments were received. Based on the findings noted in the SCO, the Division recommends that the Board approve the SCO.

Dennis Riding asked how the violations were discovered. Mr. Moore explained that the violations were discovered by conducting an inspection after receiving a complaint. Mr. Moore clarified that the owners have since sold the business to another party. Ryan Dupont asked if violations have been documented before at this facility. Mr. Moore explained this was the first time this facility had been inspected, as it was classified as a small quantity generator. Small quantity generators are not inspected as frequently as large quantity generators. Mr. Moore also noted that the new owner has made many improvements at the facility.

Michael Brehm asked what triggered the complaint. Mr. Moore responded it was a disgruntled employee. Carlton Christensen commented that there should be more of a burden for the permit holder to declare its generator status, at least on an annual basis, for the public good and for the knowledge of the staff. Mr. Christensen wondered if a legislator would be interested in carrying a bill forward on this issue.

Jeff Coombs asked if these companies file a Tier II Report/and or report to the Local Emergency Planning Committees (LEPCs). Mr. Coombs noted that if these facilities are storing hazardous waste and it was to catch on fire, it would endanger the emergency response personnel. Mr. Moore stated that the company was required to notify the local emergency response agencies. In Utah, there are approximately 100 large quantity hazardous waste generators, 750-800 small quantity generators and 1,500 conditionally exempt small quantity generators. Dennis Downs stated that with the limited staff and resources, it is not possible to visit each facility every year. However, Division staff does make every effort to visit each facility as much as possible. Carlton Christensen

stated that since most of these facilities are being inspected by the fire department as well, there could be the chance that the fire department could assist the Division by identifying if a facility has crossed that threshold. Mr. Moore stated on occasion a referral is made by the local fire department. The Division's Compliance Assistance Program is still in effect and Division staff goes out on a regular basis and conducts compliance assistance visits. Approximately 200 visits are made each year. Ryan Dupont asked about the Manufacturing Extension Partnership which focuses on small manufacturers where they have a link to the environmental regulations. Mr. Moore stated he believes that the Manufacturing Extension Partnerships work very closely with the Division of Air Quality but have not worked with the Division of Solid and Hazardous Waste.

It was motioned by Carlton Christensen and seconded by Ryan Dupont and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order (SCO) No. 0901001 between the Board and Ogden Chrome Plating to resolve Notice of Violation and Order for Compliance No. 0809034.

X. Chemical Demilitarization.

A. TOCDF Update

Marty Gray stated that TOCDF has completed destruction of 55% of the total mustard ton container stockpile.

The Carbon Filtration System for processing the mercury contaminated ton containers is undergoing systemization and the "draft" permit requirements will be out for public comment within the next two to three weeks.

Pictures of the Drum Ventilation System, the Sorting Room and the Autoclave that will be used to treat the secondary waste at TOCDF and pictures of the Explosive Destruction System used to treat chemical rounds stored in Igloo G at Dugway Proving Ground were presented to the Board. (A copy of this information is available with the meeting minutes.)

Mr. Gray explained that much of the secondary waste at TOCDF has been placed in storage in drums and igloos. A small amount of waste has been processed through the metal parts furnace, and some, where agent is not detected, is allowed to be sent off-site. However, a significant amount of waste is in storage. The Drum Ventilation System has been devised to treat this waste. This system has three components, the Drum Ventilation System, the Drum Ventilation System Sorting Room, and the Autoclave. If the Drum Ventilation System would not have been approved to handle the secondary waste, the Army would have preformed a risk assessment on the secondary waste, to verify what concentration of agent would be safe to send off to other commercial facilities for disposal. The Division had concerns with the Army sending agent contaminated waste to off-site facilities. So the Drum Ventilation System is a great solution for the secondary waste problem, as it will eliminate the need to send agent contaminated waste off-site. Mr. Gray explained how the entire system will work.

Doug Taylor reviewed the Board's approval of the Explosive Destruction System (EDS) to treat agent waste stored at Igloo G. Operations started on May 5, 2009 and eleven "shots" have been successfully treated. All the GB and serum containers have been treated. There are five shots that remain to be treated. On June 5, 2009, the Non-Stockpile Chemical Material Agency went into a stand-down with the EDS to provide more time for Pentagon officials to approve the shipment of fourteen gallons of high-grade mustard that was stored at Igloo G to be treated by the EDS. Mr. Taylor explained how the EDS system works.

XI. Other Business.

A. Status of Board appointments.

Mr. Downs stated that those Board members up for reappointment have been approved by the Governor and have been submitted to the State Senate for ratification. It is anticipated that those approvals will be made in the very near future. No difficulties are anticipated with the reappointments.

B. Update on meeting regarding the Environmental Quality Restricted Account.

Scott Anderson informed the Board that a meeting was held on May 28, 2009 with stakeholders to discuss funding issues associated with UDEQ's Environmental Quality Restricted Account (EQRA). The EQRA receives

fees from facilities that dispose of solid, hazardous, and radioactive waste. Those fees are then appropriated to UDEQ and specifically fund most of the Solid and Hazardous Waste programs and the waste management programs in the Division of Radiation Control. With the current economy, everyone is feeling the effects of less revenue coming in, including the operators of the disposal facilities. As a result, the UDEQ is receiving less revenue from disposal fees to the point that adequate funding in the EQRA has now become a crisis as there is not enough money coming in to continue to operate the various programs within UDEQ at their current level. The meeting included representatives from disposal companies, members of county governments, manufacturing and petroleum associations, and a representative from the legislature. The stakeholders will be meeting once a month to come up with a strategy to provide adequate funding. It is anticipated that some legislation will need to be drafted for supplemental funds for the upcoming year. The stakeholders will be meeting again on June 18, 2009, and will be discussing legislative options. Mr. Anderson said it will take some time to come to a consensus on a solution to keep the EQRA viable.

Carlton Christensen asked if only the historical ways of collecting revenues are being considered or will the stakeholders consider other potential sources for revenue (fees). Mr. Anderson stated that only fees currently specified by statute (solid waste fees, mixed waste fees, construction waste fees, hazardous waste fees) are being considered.

C. Waste Tire Recycling Act Legislative Sunset Review.

Dennis Downs reminded the Board that the Waste Tire Recycling Act is scheduled to sunset and reauthorization is required this year. The Waste Tire Recycling Act was discussed at the Legislative Interim Committee meeting held on May 20, 2009, and the committee recommended reauthorization for an additional ten years.

Mr. Downs explained that usually all state laws that are being reauthorized are combined into one bill, rather than addressed separately and independently before the Legislature. Therefore, it is anticipated this statute will be presented with other statutes in one reauthorization bill. The Division does not anticipate any controversy with the Waste Tire Act reauthorization.

D. Tire Recycling Fee Modifications.

Dennis Downs discussed a bill that that was sponsored by Representative Neil Hendrickson during last year's legislative session that did not pass because of time constraints. This bill increased the waste tire recycling fee for certain tires from \$1 to \$2 (specifically larger semi-truck tires only). To keep the fund viable, the fees need to be increased. Therefore, this bill will again be proposed to the legislature in the upcoming session. Representative Hendrickson will again sponsor the bill, which is anticipated to pass. The waste tire restricted account also pays for assistance in cleaning up waste tire piles around the state, which is a very valuable service that is needed. It also reimburses the tire recyclers in the state.

XII. The July 9, 2009 Board meeting is canceled, unless an emergency arises. The next Board meeting will be held on August 13, 2009 at 1:30 p.m. in the Utah Department of Environmental Quality, (Bldg. #2), located at 168 North 1950 West, (Conference Room 101), SLC.

XIII. Adjourn.

The meeting adjourned at 2:47 pm.