

TEXAS RADIATION ADVISORY BOARD MINUTES
Third Quarter Meeting
November 15, 2003
Austin, Texas

The meeting was called to order at 9:05 a.m. by Michael S. Ford, C.H.P., Chair, with the following members present: Jimmy L. Barker, P.E.; Susan E. Best, M.D., Ph.D.; Ian Hamilton, Ph.D.; W. Kim Howard, M.D.; Odis R. Mack; Troy Marceleno; Judith A. Pester, M.D.; Justin P. LeVasseur, M.D.; and Bruce A. Matson, D.D.S.

The following members were absent: Thomas M. Burnette; Eugene A. Coleman, Ph.D.; Earl P. Erdmann; Kevin L. Raabe; and Elaine L. Wells

Guests present: Rick Jacobi, P.E.; Eddie Selig, Advocates for Responsible Disposal; and Bob Wilson, Jackson, Sjoberg, McCarthy & Wilson, LLP; Julie Williams with Representative Buddy West's office; Annette Glass with Representative Warren Chisum's office; and Jay Stewart, Hanes, Scarbrough and Wright

Texas Department of Health (TDH) central office staff present: Tom Godard and Rick Bays

Bureau of Radiation Control (BRC) staff present: Richard A. Ratliff, P. E; Margaret Henderson; Susie Spears; Alice Rogers, P.E.; Ruth E. McBurney, C.H.P.; Gary Smith, Ph.D.; Debbie Borden; David Fogle; Pete Myers; Bill Silva; Tommy Cardwell; and Ruben Cortez

Texas Commission on Environmental Quality (TCEQ) staff present: Susan Jablonski, Chon Serma, Lisa Roberts, Patti Hershey, Devane Clark, and Glen Lewis

Texas Railroad Commission (RCT) staff present: Jill Hybner

TRAB Officers were elected:
Michael S. Ford, C.H.P. as Chair
Ian Hamilton, Ph.D. as Vice Chair
Elaine Wells as Secretary

Minutes of the August 23, 2003 meeting were approved as submitted.

Rick Bays, Associate Commissioner for Consumer Health Protection, gave a program report regarding consolidation within the Health and Human Services Commission, changes to the two year fees and full cost recovery, and health physicist staffing issues that were conveyed to the governor's office. Mr. Bays noted that many administrative functions have been or will be consolidated. Some consolidations could result in loss of administrative staff who support emergency response mission and the department will need to establish ways to access the

staff for exercise support or actual responses to emergencies. Mr. Bays indicated the department was awaiting concurrence from the governor's office before enacting the short-term solutions to the staffing crisis proposed by the department, including salary increases for health physicists. He noted that it is difficult to hire replacements because state classification salaries are not competitive with the private sector and that attempts to get salaries addressed by Legislature during last three regular sessions as exceptional items had been unsuccessful.

Mr. Ford, Chair TRAB, indicated that TRAB will send a letter to Governor's Office supporting need for resources to implement both short- and long-term solutions.

- I. The Executive Committee (Michael Ford, Chair) met and a quorum was present. On motion and second the committee recommended forwarding the following to the Board of Health for adoption and proposals and publication in the Texas Register for public comment.
 - (1.) Adoption of 25 TAC 289.205 Hearing and Enforcement Procedures
 - (2.) Proposal of 25 TAC 289.251 Exemptions, General Licenses, and General License Acknowledgements. (The TRAB Chair asked about the use of the word "interest" in 289.251(f)(2)(D). He asked BRC staff to research.
 - (3.) Proposal of 25 TAC 289.231 General Provisions and Standards for Protection Against Machine-Produced Radiation
 - (4.) Proposal of 25 TAC 289.252 Licensing of Radioactive Material
 - (5.) Proposal of 25 TAC 289.226 Registration of Radiation Machine Use & Services

Motion passed unanimously.

Doris Bryant of Radiation Technologies Incorporated made public comment on several specifics in 25 TAC 289.252 Licensing of Radioactive Material.

On motion and second the full board approved the committee's recommendations. Motion passed unanimously.

- II. Fee Committee (Odis Mack, Acting Chair) met and a quorum was present. On motion and second the committee recommended forwarding to the Board of Health for proposal and publication in the Texas Register for public comment 25 TAC 289.204 Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services.
- III. The Medical Committee (Kim Howard, M.D., Chair) met and a quorum was present. Mrs. McBurney gave a short update on Board of Medical Examiners' Rules Regarding Standing Delegation Orders for use of lasers, stating that the rules had been considered for adoption. She will provide a copy of the rules for the TRAB members. Mr. Cardwell noted that formation of a task group for digital imaging and computed

tomography (CT) issues is underway and he will report progress as that occurs. On motion and second the committee recommended forwarding the following to the Board of Health for proposal and publication in the Texas Register for public comment:

- (1.) 25 TAC 289.227 Use of Radiation Machines in the Healing Arts and Veterinary Medicine
- (2.) 25 TAC 289.232 Radiation Control Regulations for Dental Radiation Machines
- (3.) 25 TAC 289.233 Radiation Control Regulations for Radiation Machines used in Veterinary Medicine

Motion passed unanimously.

On motion and second the full board approved the committee's recommendations.

- IV. Waste and Industrial Committee (Michael Ford, Chair) met and a quorum was present. Ms. Jablonski of TCEQ gave an update on low-level radioactive waste disposal public meeting and rules: 30 TAC Chapter 37 Subchapter T, Financial Assurance for Disposal of Low-Level Radioactive Waste; 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 305, Consolidated Permits; 30 TAC Chapter 336, Radioactive Substance Rules. She noted that the public comment period closed; TCEQ received 237 individual comments and 14 packages from companies/organizations. If the Commission approves adoption of the rules, they will become effective January 7, 2004.

On motion and second the committee recommended repeal of former Texas Low-Level Radioactive Waste Disposal Authority Rules in 30 TAC Chapter 449 General Provisions, 450 Planning and Implementation Fees and 451 Disposal Site Management and Operation because these rules not longer apply due to statutory changes and the adoption of new rules.

Motion passed unanimously.

On motion and second the full board approved the committee's recommendations.

- V. Program Reports:

(A.) TDH, BRC, Richard Ratliff, P.E., Chief

(1.) Recruitment and Retention of Health Physicists: BRC lost five technical staff in last month. NRC in Arlington salaries are almost twice what the state pays and they also have annual cost of living salary increases; additionally a person can get \$10,000 a year bonuses for doing excellent work. BRC has lost seven staff to NRC Arlington over 10 years. Licensing lost many excellent staff to higher paying jobs recently. Senior management declared a staffing crisis situation and has developed a plan with short-term and long-term potential solutions, including salary increases and creation of a Health Physics classification through legislative action and establishment of intern positions.

(2.) Interagency Radiation Work Group (TDH/BRC, TCEQ, RCT) meets quarterly. BRC has agreed to assist RRC in conducting training for their oil and gas industry naturally occurring radioactive materials (NORM) licensees on the RRC new rules.

(3.) BRC has been working with EPA cleaning up Gulf Nuclear Webster site. At the conclusion of the clean-up, \$20M will have been spent. EPA is still identifying potentially responsible parties to attempt to recover some of the cost and considering criminal liability for Gulf Nuclear corporate officials.

(4.) Ruth McBurney has been selected as the only state representative to the International Radiation Protection Association meeting in Madrid Spain.

(5.) Other states are having budget problems similar to the Texas situation. Despite their financial problems, all states are meeting the requirements of their NRC Agreement and providing for source security.

(6.) Government Accounting Office report GAO-03-804 "Nuclear Security: Federal and State Actions Needed to Improve Security of Sealed Radioactive Sources" is available <http://www.gpoaccess.gov/gaoreports/> The report concludes that there needs to be much tighter source tracking especially with generally licensed sources. Recommendations are that licensing jurisdictions expend greater effort in determining that applicants are legitimate and hand-delivering licenses as a last effort in verifying that applicants have facilities to use the material.

(7.) MD Anderson is installing an accelerator-based proton-therapy unit.

B. Licensing, Registration, & Standards, Ruth McBurney, C.H.P.

(1) BRC is working with the Professional Licensure and Certification Division to develop a policy on the training and experience requirements for technologists operating fusion imaging equipment. Currently rules allow any certified Medical Radiological Technologist (MRT) "with appropriate training" to operate the equipment. The policy under development may define what would be considered appropriate training.

(2) Recently BRC set up a staff working group to put together an application to the US Food and Drug Administration to become a state certifying body for mammography. Rules, application procedures, and inspection procedures must be developed; and inspection equipment must be procured.

C. Compliance and Inspection, Alice Rogers, P.E.

(1) Regional Inspectors are directly supervised and funded by central office now.

(2) Comanche Peak emergency exercise is next week.

(3) On October 21, 2003 a radiographer reported the theft of one of his cameras containing a multi-curies Ir-192 source from a storage shed. The FBI administered a polygraph test to the radiographer who admitted that the camera was stolen from his vehicle parked in front of his residence. He fabricated the story about the theft from the storage shed because he knew BRC rules

- prohibited storage of cameras at residences.
- (D) Railroad Commission of Texas
 - (1) BRC and RCT are working on rules/regulations on oil and gas operations with NORM and RCT will be working with TDH to develop training on oil and gas operations with NORM.
 - (E) Texas Commission on Environmental Quality (TCEQ)
 - (1) GAO is studying current and future capacities available for disposal of low-level waste; TCEQ is providing information to be included in the report.
 - (2) Barnwell access to non-compact generators is ramping down toward closure in 2008. A couple of months ago, however, letters were sent to facilities that had been using Chem-Nuclear but did not have a current contract to continue sending waste to their site until 2008, telling them that they could be placed on a waiting list for available capacity. Many of Texas' small generators may now have to begin using Envirocare for their Class A waste but that for Class B and they may have to begin storing at their own locations. Richard Ratliff commented that when a similar situation occurred some years back, licensees were required to amend their licenses to sometimes increase the authorized activity in possession and to allow for additional storage.
 - (3) A PowerPoint presentation was provided on the work being done to prepare for receiving applications for and issuing a license for a low-level radioactive waste (LLRW) disposal site in Texas.
- (VI) The next TRAB meetings are scheduled for 01/31/04 and 05/01/04.
 - (VII) The meeting adjourned at 12:30 p.m.