

TEXAS RADIATION ADVISORY BOARD MINUTES
Second Quarter Meeting
April 30, 2005
Austin, Texas

Ian Hamilton, Ph.D., Vice Chair, called the meeting to order at 9:00 a.m., with the following members present: Susan E. Best, M.D., Ph.D.; Bradley Bunn; Earl P. Erdmann; W. Kim Howard, M.D.; Rick Jacobi; Mitchell Lucas; Odis R. Mack; Bruce A. Matson, D.D.S.; Kevin L. Raabe; Elaine L. Wells

The following members were absent: Thomas M. Burnette; Michael S. Ford, C.H.P.; Troy Marceleno; Judith A. Pester, M.D.

Guest present: Jack Hendrick, Radiation Technology; Roger Mulder, State Energy Conservation Office, Comptroller of Public Accounts; Howard Erlichman

Texas Department of State Health Services (DSHS) central office staff present: Richard Bays, Carolyn Wright

Department of State Health Services (DSHS) staff present: Richard A. Ratliff, P.E.; Cindy Cardwell; Tommy Cardwell; Ruben Cortez; Bob Free; Helen Watkins; Margaret Henderson; Pete Myers; Gary Smith, Ph.D.; Alice Rogers, P.E.; Jo Turkette; Jerry Cogburn; Sheri Schoppe

Texas Commission of Environmental Quality (TCEQ) staff present: Susan Jablonski; George Fitzgerald

Texas Railroad Commission (TRC) staff present: Leslie Savage; David Cooney

Minutes of the February 26, 2005 meeting were submitted for approval. No corrections or comments were made in regards to the February 26, 2005 TRAB minutes.

On motion and second the full board approved the minutes. Motion passed unanimously.

I. Legislation Regarding Radiation Control

Richard Ratliff explained that HB1667 would transfer radioactive waste processors and the whole uranium program from DSHS to TCEQ and there would also be a transfer of the oil and gas naturally occurring radioactive materials (NORM) responsibilities to the TRC. He stated that one major concern was that under Senate Bill 1667, reclamation plans if not already approved would be automatically accepted at a deadline set in the bill. Mr. Ratliff stated that the Nuclear Regulatory Commission (NRC) said that if this occurred they would determine that the state is incompatible and take control of the whole uranium program due to the fact that it would contradict the Uranium Mill Tailing Radiation Control Act. He stated that the bill would also make TCEQ look at the

standards for release of uranium sites and that NRC had pointed out the fact that Congress directed the EPA to set the standard. Mr. Ratliff stated that the Non-ablative Hair Removal bill had not made it to committee. Mr. Ratliff said that HB 1 and Senate Bill 1 have a rider to fund the Radiation Advisory Board members' travel to board meetings. He stated that there is also a rider for the Perpetual Care Account. There is also a rider that will allow for almost eight hundred thousand dollars in additional revenue from fees and to fund to a health physicist classification and the program for internship. The Radiation Advisory Board recommendation was accepted that this portion would be funded through fees. Mr. Ratliff concluded his talk with HB 2248, the State Classification Bill. It would direct the State Auditor to implement the report that they submitted to the state legislature and would also address the health physicist classification.

Leslie Savage from the TRC elaborated on HB1667 as well. She stated that the bill does not have the fee language in order to fund the substantial start-up costs TRC would have. She said there would be a need for health physicists on staff and additional equipment and training at TRC if HB1667 should pass.

Susan Jablonski from TCEQ began by speaking on HB1667 as well. She said that TCEQ would need 12.5 FTEs and just under one million dollars if HB 1667 passed. TCEQ would also be required to set rules on collecting fees of all disposable radioactive substances in the state and it would also put across the board fees on radioactive substances disposal in Texas. She also talked about rate percentages and surcharges saying that the bill would trigger a payment per millicurie. She spoke about the in situ transfer bill by Senator Shapiro. She said if the bill passed it would have two different agencies administering rules and laws on this issue.

II. Rulemaking Process at Department of State Health Services

Cindy Cardwell from DSHS began by speaking on the process of rulemaking and the current flowchart on those processes. She stated that due to the new legislation and reorganization, a proposed rule is on a different timeline than before the agency reorganized. A first review must be done by the Health and Human Services Commission (HHSC) before coming to TRAB. If TRAB then makes changes, the rule may have to go back to HHSC. TRAB members will be sent notices of draft rules in order to help with the timing of the rulemaking. During the public comment period after rules are proposed, TRAB may make comments to the DSHS council, an advisory council of six members that meets six times a year. In the past, rulemaking took six to eight months to accomplish. Now it will take nine to twelve months with the new process.

III. Committee of the Whole Board

- (A) Proposed amendments to 25 TAC §289.202 - Standards for Protection Against Radiation from Radioactive Materials

Cindy Cardwell stated that §289.202 had compatibility items added that deal with respiratory protection; multiple definitions and text were added as well. The intent behind the changes within the rule was to insure that the respiratory protection standards reflect the current guidance on respiratory protection and are consistent with the Occupational Safety and Health Administration (OSHA) rules.

(B) Financial Security Requirements for License and Permit Holders Under Agency Rules

Gary Smith, Ph.D., commented on financial security saying that DSHS had been contacted by Melvin Smith from the Department of Insurance on the concept of the assigned risk pool for insurance for financial security. He has been given a draft of guidance on financial security from DSHS and Regulatory Guide 1757, Volume 3 that is the NRC guide to financial security to review. Susan Jablonski from TCEQ said that they had also been in contact with the Department of Insurance when drafting their rules for waste disposal. Ms. Jablonski elaborated that the Department of Insurance did provide some substantive comments and technical background that TCEQ included into their rules.

(C) Agency Rules Regarding Closure, Decommissioning, and Clearance of Licensed or Permitted Facilities

Cindy Cardwell stated that §289.202 had no language in regards to the subject of clearance or for low concentration of radioactive materials. This is partly due to the fact that the Environmental Protection Agency (EPA) and NRC are both working currently on these concepts. Both agencies have had question about the rule and felt that it would be premature for DSHS to make these types of changes within the rule because these topics are being looked at on a national level as well.

(D) Public Comment

No public comments were suggested to the board.

(E) Action by the Full Board on Recommendations

On motion and second, the board moved to recommend proposal of §289.202.

Motion passed unanimously.

IV. Waste and Industrial Committee (Erdmann, Ford, Hamilton, Rabb, Wells)

- (A) Proposed Amendments to 25 TAC§289.253 Radiation Safety Requirements for Well Lodging Services Operations and Tracer Studies

Earl Erdmann said the definition of “sandout” should be termed “screenout” in 25 TAC§289.253. He also said a “pit” should be a “preconstructed or lined” pit. Cindy Cardwell will make the appropriate changes Mr. Erdmann recommended.

On motion and second, the board voted to recommend proposal of §289.253.

Motion passed unanimously.

- (B) Uranium By-Product Material Disposal and Storage in Texas

Dr. Gary Smith said that the uranium program has just recently been fully staffed. DSHS is beginning to work on revising Regulatory Guide 1.1. Currently, NRC Regulatory Guides 1569 and 1620 are being used by DSHS. He stated that two review letters have been sent to WCS about the byproduct disposal license. A license amendment was issued to allow WCS to accept byproduct material for storage in Texas under their current license. The Sierra Club and Texas Public Citizen have requested a hearing on this amendment. One million cubic feet of byproduct waste from Fernald, Ohio, blended with concrete and fly ash and other chemicals will be shipped in six foot diameter, six foot tall, one-half inch thick carbon steel containers. Two containers per truck will be shipped in 1500 shipments.

- (C) Public Comment

Mr. Mulder stated that he has been told by the Department of Energy that the contractor will not bring the waste directly through Texas to the WCS site. He was told it will travel through New Mexico in order to by-pass Texas until it reaches Andrews County.

Dr. Hamilton suggested that TRAB receive yearly updates from members of the uranium industry. TRAB member Kevin Rabbe agreed to arrange for a speaker for the September TRAB meeting. Mr. Raabe also asked that DSHS send the uranium companies a copy of the new organizational chart and contact list and staff will do so.

(D) Action by Full Board on Committee Recommendations

On motion and second, the board voted to recommend proposal of §289.253 with the changes as recommended. Motion passed unanimously.

V. Program Reports

(A) Texas Commission on Environmental Quality

Susan Jablonski says TCEQ is beginning the technical review of the low-level waste disposal application. NORM in public drinking water fee rules were adjusted based on comments and will be adopted within six months.

(B) Railroad Commission of Texas

Leslie Savage said the TRC has sent TRAB letters dated February 8 and March 8 as updates in regards to NORM contaminated equipment and surveying of equipment.

(C) Department of State Health Services

Richard Ratliff said a letter from the NRC has placed Texas on "heightened oversight" due to issues NRC noted in a one-day review including:

Overdue inspections
Incident reporting delays
Rulemaking records

He explained staffing shortages have resulted in overdue inspections and incident reporting delays. NRC does not have accurate records on rulemaking and that information will be provided to them. Another compatibility issue is pending regarding the rule for industrial radiography two-person crews. This issue remains unresolved between NRC and the Agreement States.

Legislation appears to be addressing the funding for the health physicist classification, so this should improve the situation.

DSHS will submit a plan for improvement to NRC and NRC will follow-up with conference calls and a full scale review in September. NRC has offered to make a presentation to TRAB about the IMPEP review they do of state programs. This will be arranged for the September 10, 2005, meeting.

Mr. Ratliff told the members that Cindy Cardwell had received the Gerald S. Parker Award of the Conference of Radiation Control Program Directors, their highest award.

Tommy Cardwell reported that these positions are vacant:
four radioactive materials inspectors
one incident investigator
one x-ray inspector
one Pantex liaison

VI. Board Member Request for Agenda Items for Next Meeting

Members requested these items for the next meeting:

NRC presentation on IMPEP review procedures

Update on uranium industry

Update on health physicist issues, related to changes made during the legislative and the impact on recruitment, classification and funding

VII. Public Comment

No public comment was received.

The next quarter meeting is tentatively scheduled for September 10, 2005 in Austin, Texas.

The meeting adjourned at 11:45 p.m.

Respectfully submitted,

Ian Hamilton, Ph.D., C.H.P., Secretary
Texas Radiation Advisory Board