

TEXAS RADIATION ADVISORY BOARD MINUTES  
1st Quarter Meeting  
February 4, 2006  
Austin, Texas

Michael Ford, C.H.P., Chair, called the meeting to order at 9:00 a.m. Members present for the meeting were W. Kim Howard, M.D.; Rick Jacobi, P.E.; Mitchell Lucas; Odis R. Mack; Troy Marceleno; P.E.; Kevin L. Raabe; Earl Erdmann; Susan Best, M.D., Ph.D.; Elaine L. Wells; and Thomas Burnette. Ian Hamilton, Ph.D., joined the meeting in progress.

Member Bruce A. Matson; D.D.S., was absent.

Guests present: Roger Mulder, State Energy Conservation Office; Jeff Skov, Rod Baltzer, Mike Woodward, Steve Cook, Derik McDonald, Chuck McDonald, William Dornsife, WCS; Carl Key, KI4U; Charles 'Russ' Meyer, US Ecology; Eddie Selig, Advocates for Responsible Disposal in Texas; Don Darling, Lt. Commander, U.S. Navy Retired; and Doug Lewin.

Texas Department of State Health Services (DSHS) central office staff present: Tom Godard

Department of State Health Services (DSHS) staff present: Rick Bays, Assistant Commissioner; Richard A. Ratliff, P.E.; Ruth McBurney, C.H.P.; Cindy Cardwell; Tommy Cardwell; Ruben Cortez; Bob Free; Margaret Henderson; Gary Smith, Ph.D.; Alice Rogers, P.E.; Jerry Cogburn; Susan Tennyson; Helen Watkins; Pete Myers; Scott Key; Jo Turkette; and Mildred Damewood.

Texas Commission of Environmental Quality (TCEQ) staff present: George FitzGerald, Susan Jablonski

Texas Railroad Commission (TRC) staff present: Jill Hybner.

Minutes of the November 5, 2005, Quarterly TRAB Meeting and December 21, 2005, Financial Assurance Committee Meeting were submitted for approval. No corrections or comments were made in regards to these minutes.

On motion and second the full board approved the minutes.

Motion passed unanimously.

I. Waste and Industrial Committee (Erdmann, Ford, Hamilton, Raabe, Wells)

- (A) Proposed advisory regarding over exposures in industrial radiography industry as related to well logging

The chair explained that this issue was held over from last meeting because issues needed to be discussed by the advisory committee. The advisory concerns a correlation between radiation over exposures and oil rig count. A draft advisory will be sent to all members with comments due March 30, 2006. At the June 3 meeting, TRAB will review the advisory and vote upon issuance.

(B) Status of proposed 11e.(2) byproduct material disposal facility at Andrews County, Texas

Ruth McBurney explained that DSHS is still in the process of reviewing that application. Unresolved issues concern the geology, design, environmental monitoring, and the operations safety and emergency manuals. Richard Ratliff has been assigned as the Project Manager to develop timelines and work with the staff. Three additional new positions have been approved and will now be posted. Using additional and existing staff and a project manager, the department will continue to process the application.

II. Medical Committee (Howard, Best, Matson)

Proposed repeal and proposal of 25 TAC §289.230 Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography and Proposal of 25 TAC §289.234 Mammography Accreditation

The rules are a step toward seeking certification status from FDA and have been coordinated with FDA. Texas legislation directed the department to seek approval from Food and Drug Administration (FDA) to become a certifying entity as well as an accrediting body in order to provide one-stop shopping for mammography facilities.

Board discussion noted that the Texas Radiologic Society had some questions about certain issues with the bill, mostly terminology but a few areas that may need a little additional fine-tuning. The committee asked for the staff responses to the questions raised by Texas Radiologic Society and they will be provided.

On motion and second, the committee and full board voted to recommend repeal and proposal of a revised rule, 25 TAC §289.230 Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography, and to propose 25 TAC §289.234

Mammography Accreditation. Members noted the copy presented had pages 20 and 21 inadvertently left out and they will be replaced.

Motion passed unanimously.

III. Financial Assurance Committee (Mack, Raabe, Jacobi)

Status of committee's working group regarding financial security for decommissioning of licensed facilities

The group met by conference call twice which included participation from Mark Worman and Melvin Smith from the Texas Department of Insurance, both of whom provided very good assistance.

Issues identified were the affordability and availability of financial assurance mechanisms. Discussions revealed that language in insurance policies might be a problem in terms of assuring coverage in cases of nonperformance. Other issues of study involve drafting language for insurance policies and developing standard methodologies for calculating financial assurance amounts. The possibility of supplementing the Radiation Perpetual Care Account with an umbrella insurance policy is being considered. Also, the group believes that having a financial assurance guidance document for the licensees to use when applying would be beneficial.

The group is sending a survey to other states to see how they approach the financial assurance issues. The group will continue to work on financial assurance issues and report any progress to the board at its June meeting.

IV. Committee of the Whole Board

(A) Vote on member absences for calendar year 2005

25 TAC §289.130 state it is grounds from removal from the Board if a member is absent from more than half of the board meetings, during a calendar year without an excuse approved by the majority vote of the advisory board. During the calendar year, one member missed three meetings. Mr. Burnette was out of state for family commitments. Otherwise, all members attended at least half of the meetings.

On motion and second, the whole board excused Mr. Burnette's absences.

Motion passed unanimously.

It was noted that Mr. Burnette has served on this board since prior to 1990, and has had near perfect attendance.

(B) Proposal of amendments to 25 TAC §289.202 – DSHS Standards for Protection Against Radiation from Radioactive Materials

In response to a petition for rule making to allow Texas to exempt from disposal requirements any materials exempted by NRC or DOE, Commissioner Hawkins ultimately denied the petition. In his denial he directed staff to seek stakeholder input on the concept and if there was consensus to move forward with rulemaking. Staff planned for that stakeholder meeting, but before that could be arranged another petition on the same concept, but more narrow in scope, was submitted. The department sought stakeholder input, using draft rule language. Comments on the rule did not indicate consensus.

TRAB discussion concerned the desire to maintain the right of Texas to accept or deny wastes which the NRC might exempt from disposal, but to have a more simple process to grant exemptions that did not require a separate rulemaking. All agreed that the State of Texas should retain the ultimate decision about disposal in Texas. Staff noted that the NRC 2002 process is not an exemption process but an approval of alternate means of disposal on a case-by-case basis; however, NRC does declare in a letter that the material is “exempt.” It was also noted that NRC procedures and review for exemptions does not consider the cumulative effect of all materials being disposed of in one facility and this is of concern to some board members and staff. TRAB suggested designing a more simple process that retains the state’s ultimate decision authority and places emphasis on compatibility of wastes.

On motion and second, the board voted to table the proposal until a second draft is available reflecting: (a) consensus between TCEQ and DSHS, (b) that the revision addresses the points raised by TRAB members (no separate rulemaking, a parallel review by Texas at the same time NRC is reviewing the request, and retention of the State’s ultimate authority to reject the waste), (c) that the process be streamlined, and (d) that the draft be available by the June 3 meeting.

Motion passed unanimously with the exception of member Rick Jacobi who abstained from voting. Mr. Jacobi requested that the minutes note

that rules of the board require that he disclose that he has a contract with Waste Control Specialists, and a financial interest in this agenda item. It should be noted that he did not engage in the debate, or participate in the vote. The same is true for Item 4B on the agenda as he also advises them on their 11e(2) permit.

TCEQ comments on the proposed rule were provided by Susan Jablonski. She stated that the NRC 2002 process is not a rulemaking process, and NRC has no obligation to resolve any comments the state may have on this issue. NRC recognizes that the state has the right to have additional requirements on disposal beyond those of NRC. The rule as presented is in the preproposal stage and TCEQ and DSHS need to resolve their concerns before proposal of the rule. TCEQ has raised numerous technical and legal issues to be resolved.

DSHS will be working with TCEQ and stakeholders regarding the issue. DSHS is requesting written clarification from the US Nuclear Regulatory Commission on its procedures and evaluations. DSHS will prepare a draft rule as soon as possible after the clarifications are received and the DSHS and TCEQ have coordinated on the draft, bringing a new proposal to the next board meeting for members to consider. In the interim, DSHS will send the next draft to all stakeholders for comment.

Members of the public commented on the proposed rule as follows:

Mike Woodward, WCS, requested the rulemaking process go forward and that it is in keeping with the U.S. Energy Policy and provides a key piece of the puzzle regarding disposal.

Bill Dornsife, WCS, acknowledged that the NRC process and review is specific to a particular site for which the alternate disposal is requested. He requested that this approval process be put into rule and that it is the only risk-based alternative for disposal.

Russ Meyer, US Ecology, does not disagree with the concept, but suggests that the state should have a say in what is allowed. He is concerned that broad wording would not allow state to have a say in the determination. He explained that in Idaho, in cases where NRC has provided the exemption letter, the state then has 30 days to query or deny the exemption. There have been no denials thus far.

Don Darling, representing himself, made remarks regarding radiation exposure levels, requesting that nothing be done to relax exposure limits.

Mr. Darling said he will send copies of the ‘Feres Doctrine’ to the board members. This document is a judicial determination regarding rights of military members to sue the government based on concern about the effects on the national treasury (**FERES v. UNITED STATES, 340 U.S. 135 (1950)**).

V. Uranium Industry Perspective

Rick Bays reported that the uranium industry has contacted him about their concerns over timeliness in the licensing process. Industry has requested the department be more responsive to the stakeholder community and licensees. They predicted four to five new applications for uranium licenses will be filed within the next 18 months. With hiring of additional staff and use of project managers the department plans to expedite the licensing process as much as possible.

VI. Management Review of the Program.

Mr. Bays reported that an organization assessment regarding delivery of services and workload as it relates to the functional model of organization has begun. Out of the roughly 800 staff, almost 500 responded to a survey. More than 80% of the respondents were non-management which means that input is coming from the staff, rather than the comments being management directed. A draft report with recommendations will be shared with TRAB as well as the broader stakeholder community. Comments will be considered and then presented to commissioners of DSHS and the Health and Human Services Commission (HHSC). Additionally, a more focused assessment of the Radiation Control Program is being planned. DSHS will either enter a professional contract with somebody that has knowledge and experience in the industry to come in and do a program assessment, or through a competitive bid process solicit someone to come in and do the assessment.

VII. Heightened Oversight by the Nuclear Regulatory Commission

Mr. Bays stated that NRC has acknowledged that DSHS has made significant progress as it relates to some of the deficiencies they had found earlier. However, they require a sustained period improvement before taking the state off heightened oversight. In the teleconference with NRC, NRC voted before comments were received from DSHS. DSHS intends to fulfill the tasks in the improvement action plan by early fall. Tommy Cardwell responded to a question on why DSHS inspection frequency far exceeds NRC frequency of inspection for some types of licensees. He explained that DSHS prioritization was based on risk. Differences in frequency can be accounted for because of different categories NRC and DSHS have designated, different compliance experience and difference

in professional judgment. For instance, DSHS believes all subsites where radioactive materials are stored should be inspected whereas NRC only inspects 20% of the subsites.

#### VIII. Staffing and Compensation Issues

Mr. Bays advised that the Texas legislature approved the appropriation rider that provided the additional appropriation authority, through increased fees, to cover the cost of creating a Health Physicist classification. Those classification changes were effective January 1st, and the staff salaries increased in the paychecks on February 1st. Eighty-eight positions were changed or upgraded. DSHS is still working on the intern program to get students indoctrinated into the regulatory scheme.

#### IX. Increased Controls for Radioactive Materials

A presentation on increased controls for radioactive materials by Mr. Pete Myers was rescheduled for the June meeting.

#### X. Comments from the Chair

Michael Ford reported that he did meet with the Governor's Appointment Office. Currently there are four vacancies and expressed desire on a fifth, and he believes those members will be appointed in the very near future, supposedly by the June 3rd meeting. Reappointments are apparently not anticipated. The expectation is to continue to serve until replaced.

#### XI. Program Reports

##### (A). DSHS

Richard Ratliff noted that DSHS has reviewed major rule packages including:

- NRC rulemaking on NORM regulation
- Department of Homeland Security new Protective Action Guides for Improvised Nuclear Devices (INDs) and Radiological Dispersal Devices (RDDs)
- Exempt General License Rule

In another major activity, DSHS is working with the Railroad Commission and TCEQ to on the clean up of the Winnie, Texas, site where a radioactive well logging source ruptured over 10 years ago. The Railroad Commission funding and funding from the Radiation Perpetual Care account will be used.

Ruth McBurney reported that DSHS received approval from the Food and Drug Administration for renewal of the DSHS Mammography Accreditation Program.

DSHS is still coordinating with the FDA on an application to become a State certifier.

(B). TCEQ

Susan Jablonski reported that TCEQ is continuing its technical review of the low-level waste disposal application from Waste Control Specialists. A second technical Notice of Deficiency was sent to the applicant on January 30th. The applicant has 60 days to respond to that Notice of Deficiency. She noted that the Commission did have a meeting with New Park Services regarding a possible license application for a commercial NORM disposal of treatment residuals from public drinking water.

(C) Railroad Commission

There were no reports from the Railroad Commission.

Michael Ford asked the agencies to consider for future meetings if they would consider it beneficial to provide TRAB written reports in advance of the meetings rather than giving verbal reports. In the meetings, members could ask questions or for clarifications. He noted that he recognized that would mean more work for the staff.

XII. Board Member Request for Agenda Items for Next Meeting

Bradley Bunn suggested that Test Reactor Project in Andrews County now under consideration might be a good presentation for some future meeting.

The next quarter meeting was tentatively scheduled for June 3, 2006 in Austin, Texas.

The meeting adjourned at 12:45 p.m.

Respectfully submitted,

Mitchell Lucas, Secretary  
Texas Radiation Advisory Board