

TEXAS RADIATION ADVISORY BOARD MINUTES
2nd Quarter Meeting
April 14, 2007
Austin, Texas

Michael Ford, C.H.P., Chair, called the meeting to order at 9:15 a.m. Members present for the meeting: Bradley Bunn; Bob Haley; Rick Jacobi, P.E.; Mitchell Lucas; Odis Mack; Troy Marceleno, P.E.; Kevin Raabe; Earl Erdmann; Ian Hamilton, Ph.D.

Members not present: Nora Janjan, M.D.; Bruce Matson, D.D.S; W. Kim Howard; Ana Cleveland, Ph.D.; Rosana Moreira, Ph.D.; Michael Walsh; Darlene Metter, M.D.

Guests present: Ed Selig, Advocates for Responsible Disposal; Roger Mulder, State Energy Conservation Office; Russ Mayer, U.S. Ecology, Mike Woodward, WCS

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

Department of State Health Services (DSHS) staff present: Richard A. Ratliff, P.E.; Kathy Perkins, R.N., M.B.A; Tommy Cardwell; Ruben Cortez; Gary Smith, Ph.D.; Jerry Cogburn; Pete Myers; Robert Free; Helen Watkins; Bill Silva; Darice Bailey; Edgar Bailey, P.E., C.H.P.; Julie Davis; Alice Rogers, P.E.

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

Texas Railroad Commission (TRC) staff present: John Tintera

- I. Minutes of the January 6, 2007 Quarterly TRAB Meeting were submitted for approval.

No corrections or comments were made in regards to these minutes.
On motion and second, the board approved the minutes.

- II. Ad Hoc Committee on Financial Assurance (Mack, Raabe, Jacobi)

Mr. Mack provided an update on his discussion with Mark Worman regarding environmental policies.

AIG suffered a \$1 million loss on a company and have pulled out of this marketplace. The Owl Insurance Co. provides a well life product, specifically a well plugging insurance product, which covers several areas: the well specific, a single premium product, a permanent product, and, each policy is non-cancellable and unsurrendable by the insurance company with limitations on what it will cover. He noted it will cover capping a well on the site. The excess Stop Loss

policy for the Perpetual Care Fund will involve further meetings with the insurance companies to develop the product. The concern is the insurance companies would want those funds frozen, if available, so they are not removed if a loss should occur, as they need accessibility. This policy would be approximately a two year project as individuals need to agree upon the building and developing of the product. There is a possibility that this may go forward. Mr. Mack will be meeting with Mr. Worman to encourage movement of the project.

III. Medical Committee (Howard, Cleveland, Haley, Janjan, Matson, Metter)

A quorum was not present for the medical committee.

Item A:

Feedback on Letter of recommendations regarding 10 CFR Part 35 Training and Experience Requirements; TRAB Comments on AAPM Petition (NRC comment closure on 16 Jan 07).

Item B:

A status on Letter to Commissioner Hawkins explaining the basis for the TRAB's decision to not recommend proposal of the repeal and issuance of the new 25 TAC 289.256 in support of new 10 CFR 35 requirements.

Michael Ford stated the board has not received response, or comments, on the letter sent from TRAB to the NRC on item A. Mr. Ford sent an e-mail to Dr. Klein, Chairman of the NRC, regarding topics A and B, specifically in the area of adequacy and compatibility, as it relates to the NRC policy. Dr. Klein deferred the question to one of his staff members with no response received. Mr. Ford is inquiring if the state has the right to maintain a more stringent program than what the NRC requires. From the TRAB's perspective of the policy, the state does have this right. Mr. Ford is recommending the board send a letter to officially request that clarification. DSHS has recommended that TRAB send the letter to formally receive an answer, rather than an e-mail. The recommendation was approved by the board.

Kathy Perkins updated the board on the status on the board's recommendation not to recommend the rule. There was a meeting with Dr. Lakey, Commissioner of DSHS. The decision was made to send the memo to Mr. Hawkins, Commissioner of the Health and Human Services Commission, explaining the situation to him. Ms. Perkins' staff met with Mr. Hawkins' staff, and the direction Ms. Perkins' staff received was to move the rule forward to the DSHS Council, as this is the purpose of the Council, with the proposal process being to continue to receive stakeholder input. Mr. Ford was notified by Ms. Perkins concerning the decision, with a meeting being held on Thursday, April 12th. Mr. Ford requested Ms. Perkins deliver a letter to the Council on Thursday. The Council reviewed the letter at the meeting, and decided to vote to send the rule to Mr. Hawkins recommending proposal;

however, in the packet sent by DSHS, they requested the Council's discussion concerning Mr. Ford's letter be noted. In addition, Mr. Ford's letter will be included with the packet. The Council directed Dr. Lakey and Ms. Perkins to pick up Mr. Ford's letter and prepare a letter from DSHS to the NRC requesting a response as well. The next step is for the packet to be forwarded to Mr. Hawkins for a 30 day comment period. DSHS will update the board on when this occurs. Ms. Perkins further explained this issue was brought to them by the NRC when they visited DSHS last fall. DSHS wants the NRC to weigh in, and once they weigh in, DSHS can decide which way they will need to go from that point.

The board recommends that DSHS state in its letter to the NRC that it supports the board's position.

Carolyn Wright, DSHS attorney, stated, concerning the stringency issue, need to look at the words of the statute and the rules. Policies have a role that statutes and rules override vague or more general language that appears in policies or in preambles. That is not the case in many areas of the NRC statutes and its rules.

Mr. Ford stated that if it is in the state's interest not to enact these changes for the safety of the patient, the public, and the medical team, then the state should say that the rule compromises public health, and the 10 CFR 35 changes should not be implemented.

Ms. Wright stated the board's avenue is to petition the NRC to persuade them of the correctness of the board's point of view, but, as she interprets the rules, as they are, there may be consequences for DSHS and the state, if it does not follow NRC compatibility rules.

VII. Waste & Industrial Committee (Erdmann, Bunn, Ford, Hamilton, Lucas, Moriera, Raabe, Walsh)

Item A:

Agency action(s) on Board recommendation regarding path forward for alternative disposal, regarding review of 25 TAC §289.202 and DSHS recognition of NRC approvals of applications for alternative disposal made under 10 CFR 20.2002.

Kathy Perkins updated the board on the status of this item. Ms. Perkins and staff met with Dr. Lakey, and developed a letter to Mr. Hawkins. Mr. Hawkins had requested TRAB's opinion on the petition for rulemaking, which was discussed at January's TRAB meeting. DSHS developed a letter to Mr. Hawkins explaining TRAB's response. Mr. Ford drafted a letter from TRAB concerning their opinion, which was forwarded to Mr. Hawkins. The decision was made in a meeting with Mr. Hawkins' staff, to send Mr. Ford a letter stating they were evaluating, and would respond to him in 30 days. Ms. Perkins' staff had drafted a response to HHSC, but currently has not received a response. The DSHS is

requesting the technical documentation behind the rule. There have been no discussions concerning this draft rule outside of DSHS and TCEQ.

Regarding criticisms of this draft rule in the media, Mr. Ford sent correspondence to Ms. Perkins and Mr. Shankle, at TCEQ, regarding what the state's policy is.

Mr. Jacobi stated that he has some thought about the way the rule was worded. The rule has some language that might try to impose standards on the TCEQ, and the way as it is currently written, may need to be amended to either DSHS or TCEQ.

Item B:

Follow-up on Chair discussions with key decision-makers on state budgeting processes to seek relief on the state's current practices of funding programs related to radiation, including the possibility of establishing dedicated funds in an effort to stave off future budget shortfalls.

Mr. Ford met with Rep. Chisum on Friday, April 13th, and discussed the concern, from the state's perspective, of being able to support the influx of interest in the uranium industry, specifically in uranium mining, the state's ability to support the applications being submitted, and to evaluate them in an adequate and appropriate time-frame. The funding mechanism the state has currently does not allow them to be as responsive as needed. Rep. Chisum was receptive to having discussions with DSHS and TCEQ regarding possible changes. He requested that if any changes are needed, they should be communicated to him within the next two weeks.

Item C:

Discussion on Karnes County Cancer Study.

Mr. Raabe updated the board and agencies on the study. One of the things that was developed by the Joint Defense Group was a plaintiff's claim for cancer. A lot of money was spent by the Joint Defense Group to review the allegations that have been made, which have been around for several decades. The epidemiology studies that have taken place in the late 80's reached the same conclusion as this most recent study, with no significant increases in Karnes County for any type of cancer. The comparisons were made to four controlled counties that were adjacent to, or near, Karnes County with similar demographics. The cancer rates were no different in Karnes County to the controlled counties, and were slightly less in the state the U.S. average.

VII. Committee of the Whole Board

Item A:

Agency updates on NRC Management Review Board Findings from Integrated Materials Performance Evaluation Program (IMPEP)

Richard Ratliff provided an update on behalf of DSHS. DSHS is off heightened oversight status. NRC was complementary of the increased performance of staff and the updated inspections. Reports are not required to be given them; they will call every six months and will return in one year for a one day program status review.

Item B:

Update on proposed transfer of uranium and byproduct waste program from DSHS to TCEQ.

Richard Ratliff stated that Sen. Duncan's bill, HB1604, passed out of the Senate Natural Resources Committee and will be heard by the full Senate on Tuesday, April 17th. There are no House Sponsors.

Item C:

Action by the full board on recommendations of all committees.

Item D:

Proposal of 25 TAC 289.205 Hearing and Enforcement Procedures.

Darice Bailey provided updates on behalf of Cindy Cardwell. There was information added to better secure that the recipient of a notice of violation know that they need to respond to the notice. Information was removed from the definition to the actual body of the text as it pertained to regulatory wording.

Item E:

Proposal of 25 TAC 289.257 Packaging and Transportation of Radioactive Material

The proposal narrows the international recommendations for transportation and packaging.

A1, A2 values for packaging changed; they have already been enforced federally and internationally.

Item F:

Proposal of 25 TAC 289.130 Radiation Advisory Board

The proposal addresses the board's regulation that sets up the rules and requirements. The name was changed from the Board of Health to the Executive Commissioner of HHSC. The sunset date was removed by the executive commissioner as it was addressed in the reorganization.

Mr. Ford commented on 25 TAC 289.130. His opinion is that Government Code Chapter 2110 only requires the agency to develop rules to describe how it interacts with a given board, but all of H&S Code, Chapter 401 is repeated throughout 289.130 when it's not necessarily required.

Ms. Wright responded by saying that it is not necessary if requirements, with real specificity, are in an act, that they be in a rule because they are the law in the act. Most programs incorporate the language because it's "one-stop shopping". She will review for unnecessary redundancy to ensure completeness is the main aspect.

Mr. Ford requested that the TCEQ and the Railroad Commission share the MOUs with TRAB in regards to 130.

Item G:

Proposed repeal of 25 TAC 289.3 Control of Infrasonic, Sonic and Ultrasonic Radiation

This regulation had not been revised since 1975. So it has been proposed for repeated.

The majority of the board members did not receive the rule packets before the meeting; therefore, no action was taken by the board regarding any of the rules that were submitted. The rules were tabled for the next meeting, provided the council's calendar will support delayed action by the TRAB.

Item H:

Discussion of potential TRAB information Management Policy

Tabled to the next meeting.

Item I:

Public comment

Roger Mulder, with the State Energy Conservation Office, provided comments. He attended the NRC information conference a couple of weeks ago, and during the keynote address, it was announced, that due to health concerns, Commissioner

McGaffigan will not seek an extension and is day-to-day at the commission. During Mr. Meredith's keynote address, he announced that he will not be seeking an extension. In regard to the flow of information from the NRC to the State, it would be very difficult for someone in Washington to know what specific information would be of interest to the State, as the topics may be broad, and may not be of interest.

Mr. Ford has spoken with Janet Schlueter of the NRC, and inquired about items that directly affect, or concern, the Texas Agreement State status.

VIII. Program Reports

See Attached Reports from RRC, TCEQ, and DSHS

IX. Board member requests for agenda items for next meeting

Requested the NRC attend the next meeting to explain their rules on compatibility.

Invite one of the oil or gas associations to update the board on procedures for exposures.

X. Public Comment

Russ Meyer, of U.S. Ecology

XI. Next Meeting Date

July 14, 2007

XII. Meeting Adjourned

12:00 p.m.

Action Items:

1. Agenda Item II (Mr. Mack): provide update on pursuit of Stop Loss policy for Radiation & Perpetual Care Account.
2. Agenda Item III (Mr. Ford): send a letter to NRC Chairman Klein to officially request the NRC's position regarding Compatibility Category B and whether Texas can maintain a more stringent set of requirements due to patient safety concerns.
3. Agenda Item III (Dr. Howard & Medical Committee): set up meeting to discuss specific concerns related to changes in 10 CFR 35 requirements with Dr. Lakey.
4. Agenda Item VII.F (TCEQ & TRC): share the 289.130 related MOUs with TRAB.