

TEXAS RADIATION ADVISORY BOARD MINUTES
1st Quarter Meeting
January 6, 2007
Austin, Texas

Michael Ford, C.H.P., Chair, called the meeting to order at 9:00 a.m. Members present for the meeting: Bradley Bunn; Ana Cleveland, Ph.D; Bob Haley; W. Kim Howard, M.D.; Rick Jacobi, P.E.; Mitchell Lucas; Odis Mack; Troy Marceleno, P.E.; Darlene Metter, M.D.; Kevin Raabe; Rosana Moreira, Ph.D; Michael Walsh.

Members not present: Earl Erdmann; Ian Hamilton, Ph.D; Nora Janjan, M.D.; Bruce Matson, D.D.S.

Guests present: Elena Castell, Texas A&M University; Doris Bryan, Radiation Technology

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

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

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

Texas Railroad Commission (TRC) staff present: Jill Hybner

- I. Minutes of the October 14, 2006, Quarterly TRAB 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.

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

Mr. Mack deferred the status report until the next meeting.

III. Waste & Industrial Committee (Erdmann, Bunn, Ford, Hamilton, Lucas, Moreira, Raabe, Walsh)

Mr. Raabe addressed the following issue on behalf of the committee:

Item A.:

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

The committee has reached a resolution on the issue, and have proposed a rule packet. The committee moved to have a motion to support the proposal, and submit to DSHS a recommendation that they adopt the rule. The differences in the rules are maintaining the materials licensed material to be maintained under the state control as opposed to being an exempted material. It allows the state to be able to monitor the impact to the licensed facility and the public.

Cindy Cardwell explained that there was not a rule presented to the board for approval. It was understood, at the last TRAB meeting, that the board as a whole was going to make a recommendation to DSHS and TCEQ as to a direction forward. At that time, Mr. Hawkins asked for a recommendation of the board, and that is what the agencies are waiting for. Mike Ford issued a two-paged, front and back copy of a letter of recommendation to amend 25 TAC 289.202, paragraph ff, and section 4. Mr. Ford asked for comments after the reading of the recommendation. Ms. Cardwell recommended that the agencies get together and review the recommendation. The procedure will be to report to Mr. Hawkins what the Board has recommended before any further instructions, because he specifically referred it to the Board. Mr. Ford stated that the Board would probably need to send a recommendation to both Mr. Hawkins and Ms. White, since it involves both DSHS and TCEQ.

A motion was put forward to approve the document as a recommendation to the commissioners of TCEQ and DSHS. The motion was approved.

Item B.

Follow up on December 15, 2006 letter to agencies Re: Uranium Mining in Texas

The letter went forth, and there has not been a reply from any of the agencies. Mr. Ford asked for comments regarding the letter. Richard Ratliff explained that the department had increased the uranium FTEs by three with a geologist, an engineer, and a health physicist. Because of funding, DSHS had to inactivate the civil engineer position. DSHS has been working with the Uranium Industry Group, and Tom Godard is to develop the Rider language that the Uranium Industry can take forward to the next session of the legislature to have the fees appropriated to DSHS from uranium activities, that way the agency could get the money from new applications and renewals to be able to contract or hire staff. Ms. Perkins further explained that in the last session, the Regulatory programs took a five percent cut. Rider 85 said that if the fees were raised, the program would get the five percent back. The fees were raised in radiation overall by

about 1.2 million dollars, which was about how much the cost increases were. The Comptroller's Office narrowly interpreted the Rider that we would only get the 5% back. When the cost went up to about 1.2 million dollars, the program got \$700,000 back. This caused problems because the interpretation didn't come until toward the end of the year, and at that point, staff salaries had been raised, travel costs had been increased, and three new positions had been added. Therefore, it caused a budget shortfall last year, and there will be not a carry forward for this year. Four vacant positions have been inactivated temporarily. Continual communications are ongoing with the CFO regarding these matters. Richard Ratliff addressed the question from the Board regarding civil engineering reviews. There is currently still one engineer.

A question from the board was posed regarding standardization of certain things that are common to all licensees. Ruth McBurney responded by explaining that a workgroup needs to be set up in order to get this done.

Tom Godard addressed the question from the board regarding the issue of contracting outside assistance. He explained that the issue would be who would pay for it, because the monies would go to the General Revenue, and then it would not be disbursed to the program.

A motion was put forward to have the Board facilitate a meeting among the key people within the budget structure of the state to talk about dedicated funding, and things of that nature. The motion was carried forward.

A Proposal to repeal and propose new 25 TAC §289.255 radiation safety requirements and licensing and registration procedures for industrial radiography. Cindy Cardwell explained the reason for the repeal is because it has been extensively rearranged and renumbered. Several reasons for the minor amendments were because they were due for review, and it allows the opportunity to make changes that need to be made. There were also several items of capability, with NRC that needed to be incorporated, for instance, wording changes with the testing of the depleted uranium shielding that associated with radiography cameras that use sealed sources of radiation, some clarification requirements for calibration of those services that the companies do themselves, and other several compatibility items were added. Recordkeeping was also one of the items added, so that we are now consistent to what NRC has in terms of recordkeeping. Some of the things pointed out in terms of the four year review: clarified a lot of things concerning industrial radiography certification and the exam that is a part of that. The fees for the exam and for certification will be raised. This has not been done since 1999, and statutorily, we have a responsibility to recover 100% of our costs. The fee will be raised from \$25 to \$120. In terms of certification, the fee will be raised by \$10. Ms. Cardwell asked for the Board's recommendation to forward the proposal for consideration for a proposed rule, which means that it will go out for formal comment. A motion went forward to recommend that the rule package move forward to proposal. The motion was approved.

IV. Medical Committee (Howard, Cleveland, Janjan, Matson, Metter)

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

Item A:

Letter of recommendation from American Association of Physicists in Medicine

NRC changed the way they look at board certifying agencies. Agencies will have reapply for their certification to be recognized. No certifications were grandfathered in unless they were currently listed on a license. AAPM is asking for petition for rulemaking, and the committee has been asked for their input on this particular issue, whether they would support the change or not. Dr. Howard and the committee supports the change. There was a motion put forward to send a letter to AAPM stating that the committee supports the change. The motion was approved.

Item B:

Letter of recommendation regarding 10 CFR Part 35 Training and Experience Requirements

Cindy Cardwell explained that this is a two-part process in on the part of DSHS of adopting the significant changes that were made to NRC's equivalent rule, which 10 CFR Part 35. In 2000 DSHS adopted all of their rules except for the training and experience requirements, because, at the time, there were still some issues NRC was still working on with the training and experience requirements. DSHS' training and experience requirements are now more stringent than what NRC has adopted. All of the medical rules must be compatible with NRC, and they are Category B of compatibility. That means we don't have to have the exact wording, but we must essentially adopt the objectives of it. DSHS also cannot be more stringent than the NRC use. The training and the experience requirements had to be included in each of the different sections on modalities, so it caused extensive renumbering of the rule to match. One exception that DSHS has put in is we have clarified in rule what we currently do by license condition for our mobile services.

The Board and staff gave comments regarding the rule regarding training experience and requirements.

There was a motion to send the rule forward as a proposed rule. The Board has recommended not proposing the recommendation of 289.256. The Board will contact the NRC address compatibility requirements.

Mr. Ford will consult with the NRC chair regarding the expectation of compatibility when a State desires to maintain more rigorous requirements for the purpose of patient safety and to minimize the potential for misadministration.

VII. Committee of the Whole Board

Item A:

Update on NRC Heightened Oversight of DSHS

Richard Ratliff sent the Board members NRC's preliminary report after the IMPEP Review was done. DSHS has to respond by the next week. There were several issues that DSHS had with the review. They felt the person that reviewed the reporting of incidents to NRC did not understand how it was done by DSHS. There were comments made by DSHS staff regarding the reporting of incidents. This issue will be brought forth at the Management Review Board on February 2nd. This will be a public meeting, held at the Department of State Health Services at 9 a.m., in Room T-609. DSHS staff gave comments and answered questions from Board members regarding the continuance of the heightened oversight status.

Item B:

Discussion of agency recommendations for the proposed transfer of uranium and byproduct waste program from DSHS to Texas Commission on Environmental Quality

DSHS staff members explained, so far, there is no proposed legislation. There are not a lot of specifics to talk about without language, as far as what resources will be necessary.

A board member if this was an implementation phase, regarding a statement made in the draft recommendation (ff). One of the concepts that have been talked about are that rules would not change upon the transfer, so that anyone who had pending activities under the department would fall under the rules of the Commission. The question was also asked by the board was, what is the feeling in regard to the staffing that's laid out, and what is the current staffing. Eleven is the current number. There have been two additional FTEs requested. The Uranium Committee has met extensively with Senator Duncan, and his staff, and reviewed the report the agencies have put out. There was a response to Sen. Duncan that had a lot of specific recommendations to him that were made. He had planned to have a bill filed, but this has not happen, so there is a lot of speculation as to whether or not there will be one, at this point.

Item C:

Action by the full board on recommendations of all committees

1. The committee voted to send a letter to the NRC in support of the AAPM petition to the NRC. A motion put forward to the Board for approval. The motion was passed.

2. The committee did not recommend the placing of the new 25 TAC 289.256 rule. The committee voted against this proposal. The motion was put forward to the Board, and it was passed. The rule will not be recommended for proposal.
3. Discussion of medical issues regarding training with NRC, as well as compatibility issues with that rule. The Board passed a motion for the discussion to take place.

The medical committee will put together the letter of recommendation regarding support of the AAPM petition to the NRC. The executive committee will send a letter to the commissioners to have them understand why the Board voted not to propose the rule proposal.

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

- (A) 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. The committee asked for a motion to send that approval forward. The motion passed. The Board will forward that with a letter to DSHS.
- (B) Follow up on December 15, 2006 letter to agencies regarding uranium mining in Texas. The chairman of the TRAB will meet with key members of the Legislative Budget Board, the Comptroller's Office, the Legislative Oversight Committees, and the Senate Finance and House Appropriations Committees to advise them of the critical issues, and the effect on the radiation safety and public health and safety that taking those monies away from the agencies would cause. A motion was put forth by the committee, and passed by the Board.
- (C) Recommendation to go forward with proposal of 25 TAC 289.255 concerning radiation safety requirements and licensing and registration procedures for industrial radiography. A motion from the committee to recommend proposal was put forth; the motion passed.
- (D) Proposal – Change to 25 TAC §289.202, Standards for Protection against Radiation from Radioactive Materials. DSHS elaborated on the changes to be made, and the reasons why they are needed to be implemented. There was a recommendation put forward to the Board to propose the rule. The motion passed.

(E) Public Comment
No comments from the public

(F) Recognition for retiring staff
Ruth McBurney, C.H.P., of DSHS, is retiring after 25 years of service with DSHS and TDH, this month. Tom Godard, is also retiring after 15 years of service this month.

VIII. Program Reports

See Attached Reports from TCEQ, RRC, and DSHS

IX. Board Member Requests for agenda items for next meeting

- (A) DSHS' information management policy, in terms of how the policy issues bulletins to the affected consumers.
- (B) Notification of local authorities regarding Emergency Response.
- (C) Presentation on compatibility on the Radiation Distribution Sheet.

X. Public comment

No public comment

XI. Next meeting date

April 14, 2007

XII Meeting adjourned

Signed,

Mitchell L. Lucas, Secretary
Texas Radiation Advisory Board

