

TEXAS RADIATION ADVISORY BOARD MINUTES

Third Quarter Meeting

September 18, 2004

Austin, Texas

Michael S. Ford, C.H.P., Chair, called the meeting to order at 9:00 a.m., with the following members present: Susan E. Best, M.D., Ph.D.; Earl P. Erdmann; Ian Hamilton, Ph.D.; W. Kim Howard, M.D.; Odis R. Mack; Troy Marceleno; Kevin L. Raabe; Rick Jacobi, P.E.; Mitchell Lucas; Bruce A. Matson, D.D.S.; Judith A. Pester, M.D.; and Elaine L. Wells, Secretary.

The following members were absent: Thomas M. Burnette and Bradley Bunn.

Guest present: Don Darling, member of the public; Eddie Selig, Advocates for Responsible Disposal in Texas; Arthur Tate; Dean Kunihiro, Waste Control Specialists Inc.; Annette Glass with Representative Warren Chisum's office.

Department of State Health Services (DSHS) central office staff present: Richard Bays and Tom Godard.

Department of state Health Services staff present: Richard A. Ratliff, P.E., L.M.P.; Cindy Cardwell; Tommy Cardwell; Ruben Cortez; Margaret Henderson; Ruth E. McBurney, C.H.P.; Pete Myers; Elva Ramirez; Alice Rogers, P.E.; Bill Silva; Debbie Borden; and Susie Spears.

Texas Commission of Environmental Quality (TCEQ) staff present: Susan Jablonski, Tony Bennet, and George Fitzgerald.

Texas Railroad Commission (TRC) staff present: Steven Seni, Ph.D.

Minutes of the June 5, 2004, meeting were approved as submitted.

Officers Michael S. Ford, C.H.P., Chair, Ian Hamilton, Ph.D., Vice-Chair and Elaine Well's, Secretary were re-elected.

Ms. Susan Jablonski with Texas Commission on Environmental Quality (TCEQ) reported that on August 4, 2004, TCEQ had received one license application from Waste Control Specialists, Inc., (WCS) and it contained 4000 pages. TCEQ is required to respond with either a Notice of Deficiency (NOD) or Declaration of Administrative Completeness by September 18, 2004. In compliance with this regulation, TCEQ sent out the NOD on September 17, 2004, covering several items of deficiency found on WCS license application. It was stated that this data is needed before TCEQ can start a technical review of the license application. Ms. Jablonski stated that NOD will be posted on TCEQ website and board members will be provided a copy by email, postal mail or hardcopy.

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TCEQ is waiting to receive data on some of the following before a review process can begin:

1. More institutional information concerning ownership. Long term arrangement as well as legal description.
2. Hydrologic data such as surface water, modeling and other analysis.
3. Geologic data and information specifying where site is located on maps.
4. Engineering specifics such as site stability, back fill cover, storage and treatment facilities.
5. Operational procedures stipulating radiation safety guidelines.
6. Training Program strategies.
7. Performance Assessment.
8. Environmental Monitoring
9. Ecologic data
10. Financial Assurance

Ms. Jablonski reported that WCS has 30 days to review and respond to the NOD. To assist in evaluating the license application, contracts will be awarded to Texas A & M, Nuclear Engineering Department; University of Texas, Bureau of Economic of Geology; and Texas State University.

Mr. Richard Bays gave an update on Department of State Health Services (DSHS) reorganization. Due to consolidation that occurred on September 1, 2004, Texas Department of Health is now officially known as the Department of State Health Services (DSHS). Mr. Bays reported that October 11, 2004, was the goal to complete the interview and selection process for all group and branch managers.

Mr. Bays stated that he had identified and suggested three keys of success to DSHS Commissioner: (a) Management staff, (b) Space: Food and Drug and TCADA will be collocated to the Exchange Building by the end of the year, and (c) Coordinated Comprehensive Integrated Automation System. Mr. Bays gave a summary of request that has been submitted for resources to purchase a new automation system.

Mr. Bays reported that the Health Physicist Classification had received approval from the State Office. The next step is to get additional funding approved. A proposal will be submitted to obtain funding to support pay structure. The salary increase will cost

\$350,000 a year. A part of this money will go to fund an intern program for graduating high school seniors or college students.

Mr. Ford reported that in August both he and Dr. Hamilton met with Mrs. Heidi McConnell, Mr. Steve McCraw and Mr. Jack Colley from the governor's office to discuss TRAB concerns regarding reorganization of Texas Department of Health (TDH) and Bureau of Radiation Control (BRC) now known as Department of State Health Services (DSHS). Mr. Ford discussed his concerns regarding the new DSHS structure not being set up successfully to promote knowledgeable, licensed, certified, and experienced people that will meet criteria to make high risk radiation decision. Mr. Ford commented that extremely qualified people such as Mr. Richard Ratliff and Mrs. Ruth McBurney, as well as others, have come up through the ranks of the old TDH/BRC structure and have acquired thorough and extensive knowledge, experience and understanding of the technicalities in the field of radiation. Mr. Ford asked that with the new and current organization as it is structured, how would it develop its people to step into those roles and to be able to understand the profound operations and procedures of radiation control within the State of Texas? Mr. Bays stated that it would be a challenge but that the agency was committed regardless of the structure to provide good service.

The board requested DSHS provide them with a summary of examples of other states (Nebraska, Louisiana, and Kentucky) that have gone through restructuring and have failed. The committee is planning to review the report and discuss preventive actions to help develop successful strategies for the new restructuring in Texas. DSHS agreed to provide board information requested.

Mr. Ratliff stated that the letter received from U.S. Nuclear Regulatory Commission (NRC) came from the office of Martin Vergillo who was chairman of the Management Review Board for Texas. He compiled recommendations and had his staff write a letter. The letter was reviewed by Vivian Campbell and sent forward to Rockfield, Maryland. The board suggested that it would like to talk to staff that wrote the letter to get feedback on issues mention in letter. Mr. Ratliff reported that the reason it was recommended for NRC to return in six months for another review was due to the following reasons: abundance of vacant positions, extended time positions were vacant, and backlog for inspections. Mr. Ratliff gave list and length of time position have been vacant.

Cindy Cardwell gave presentation on variations between agency rules on exemption, clearance, decommissioning and closure limits for agencies. A handout was provided to the board members. It was recommended agencies give higher priority to homogenization of various limits (exemption, decommission, discard, transfer for disposal, release for unrestricted use, radiological requirements for unrestricted use, limits for contamination of soil, surfaces of facilities and equipment and vegetation) taking into account compatibility issues. The purpose was to better protect the public health and safety. On motion and second the committee recommended for Mr. Rick Jacobi to draft a letter to the agencies. Motion passed unanimously.

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The board members recommended Mr. Odis Mack be the contact person for issues regarding feasibility of using the Radiation Perpetual Care Account to fund insurance as a means to take care of abandoned sources and contamination. The board requested for Mr. Mack to do research for comparisons purposes what other companies would do in a high risk exposure scenario, what premiums would be charged, and to research if DSHS could get an umbrella policy. Mr. Mack requested the agency provide him with a 10-year loss history. Mr. Mack will contact Jerry Forbes, Health Physicist who is with American Nuclear Insurers. Mr. Mack stated he would report to the board in December 2004. The members agreed the time would be appropriate in case recommendations would be made in the upcoming legislative session.

The board discussed specifics regarding communication policy using state equipment for solicited or unsolicited advice from TRAB and if board members could be interviewed by media individually. The board requested a clarification as to when is advice considered lobbying rather than acting in advisory capacity. Tom Godard gave explanation of using state equipment for advising and communicating regarding solicited or unsolicited advice. On motion and second the committee recommended Mr. Ford, Chair, contact the Texas Ethics Commission to get facts on distinguishing between advising and lobbying and using state equipment. It was also recommended for Mr. Ford to speak to the DSHS agency on the appropriateness of using equipment for making advice to the legislature. The board stated they would like to have this resolved before the legislative session begins. Motion passed unanimously.

Mr. Ford, Chair, read the TRAB Media Policy. It was agreed that no individual member should presume to speak in behalf of the TRAB. On motion and second the committee adopted the media policy, and if members are contacted by media they must refer the inquiry to the TRAB Staff or Chair. Staff will distribute information to proper channels. Motion passed unanimously.

Mr. Tom Godard briefed the committee on the Attorney General's Office having the final authority to render or withhold specific information on radiation. Government Code § 418.178 regarding confidentiality of information about radioactive material that is "more than likely to be used in the construction or assembly of a nuclear weapon or weapon of mass destruction." Staff members review information and render opinion if weapons could be constructed with information given. If it is found that too much information is given, the request is then sent to Attorney Generals Office for final decision for releasing data. Ruth McBurney briefed the committee on what could be considered a dangerous source. She based information on International Atomic Energy Agency categorization. Radiation sources are categorized by level of risk, activity, what type of radiation and dispersability. Tom Godard stated that the law draws the line as specific information as opposed to general information. NRC is tightening request for information. Licensee will see a greater burden in releasing information. Mr. Tom Godard stated that some type of policy process would have to be developed that would benefit both sides. On motion

and second the committee recommended to work with the agency to review if legislative changes are needed to upgrade public information laws. A report will be made available to board in December. DSHS will send a copy of the current policy to all members and Mrs. McBurney will email implementing policy to Margaret Henderson for distribution to members. Motion passed unanimously.

- I. The Medical Committee (Kim Howard, M.D., Chair). The committee met September 18, 2004, and a quorum was present. Mrs. McBurney provided the committee a review of the assessment study for the need to have a Radiological Practitioner Assistant Program (RPAP). She stated it would essentially take further legislation to set up a RPA Program in the State of Texas. Montana's House Bill No. 501 was provided to the board for study comparisons and further discussion.

Mrs. McBurney reported that DSHS continues to receive requests for exemptions from the requirement of 25 TAC 289.256(ff)(1)(B)(ii). She reported that most are being sent in by applicants for authorized users on licenses limited in scope to diagnostic nuclear medicine for cardiac imaging only. Mrs. McBurney gave a summary of what the rule requirements are and why the applicants were having problems receiving the required supervised work experience. She stated that in the future, DSHS plans to adopt rules similar to NRC, but at the present time NRC is still in the process of refining their rules. She briefly stated that until regulations are worked out at the national level, Texas would continue to follow procedures in current rules.

Mrs. McBurney gave options for recommendations:

1. Continue to bring individual requests for alternative training (preceptor that Supervised training was authorized on a license but not for the "full scope" of diagnostic nuclear medicine) to the TRAB Medical Committee for review and comment.
2. Until the rules can be changed, recommend that licensing staff authorize applicants as authorized users for diagnostic nuclear medicine limited to nuclear cardiology imaging if their documented supervised work experience was obtained under the supervision of an authorized user who is authorized for the full scope of diagnostic nuclear medicine or is authorized for diagnostic cardiac imaging.
3. Propose rulemaking in the interim that would address this issue until the full revision of Section 289.256 can be develop.

The board recommended staff continue to bring requests to them for comment.

- II. Waste and Industrial Committee (Earl Erdmann, Chair). The committee met September 18, 2004, and a quorum was present. The committee heard from Mrs. Cardwell who gave an update on two separate rulemaking efforts: (1) Rulemaking for disposal of low activity radioactive waste as an amendment to 25 TAC 289.202 concerning standards for protection against radiation from radioactive materials. (2) The standard is to incorporate a rule similar to what is called 300-day half-life rule that would allow low radiation activity radioactive material to go into a subtitle C facility. DSHS received comments from NRC and EPA. She stated that the next step would be to meet with staff and go over comments received before meeting with TCEQ. Through the consolidation process, the 4 new agencies that were created would have 5 nine-member councils, which will be appointed by the governor. Mrs. Cardwell closed by giving an updated report on a petition for rulemaking for disposal of low activity non-naturally occurring radioactive materials (NORM) oil and gas tracer waste materials in Class II well that has been approved to accept non-hazardous oil and gas waste. Mr. Earl Erdmann gave definition on packers and staff noted this requirement is in RCT rule.

The board agreed no formal proposal was needed. No action taken.

- III. Ad Hoc Committee on Radionuclides in Drinking Water (Hamilton, Ford, Howard, Raabe). The committee met September 18, 2004, and a quorum was present. Mr. Tony Bennett with TCEQ provided the board with an update on the adoption of TCEQ amendments to 30 TAC &&290.104, 290.106-290.108, 290.111, and 290.121 on radionuclides in drinking water. Mr. Bennet provided the board an update on the repeal of Texas Commission on Environmental Quality 30 TAC 290.115 on drinking water quality and reporting requirements for public water systems.

No action was taken.

IV. Program Reports

A. Railroad Commission of Texas, Steve Seni, Ph.D.

- (1) Dr. Seni informed the board that DSHS and TCEQ have been going statewide giving seminars on NORM to members of the oil and gas community. He stated four seminars had been given to inform regulated companies about rule compliance. He informed the board that 3 more seminars will be presented in San Antonio, Corpus Christi, and Amarillo in November. Presentations have already been given in Midland, Wichita Falls, Houston, and Kilgore. The attendance sheet could be made available if board members requested it. It was stated that a

Memorandum of Understanding (MOU) is available for RRC and TCEQ and one is being considered for DSHS.

B. DSHS, Richard Ratliff, P.E., L.M.P.

- (1) Mr. Ratliff stated that all 33 Agreement States and 2 states with pending agreements will meet the following week. They will meet to discuss issues including whether well loggers and radiographers should be issued security orders or should the states be given authority to do this under health and safety provisions is currently being followed. They will also discuss NRC's medical rules.
- (2) Mr. Ratliff also reported that NRC did the Texas program review 3 ½ years ago and one of the issues that was brought up was the industrial radiography rule, which at the time was not compatible with NRC's. Mr. Ratliff gave summary of progress of the rule within NRC and radiographer tests given in the state of Texas.

C. Inspection Unit, Radiation Branch, Alice Rogers, P.E.

- (1) Mrs. Alice Rogers briefed board members on an incident in San Antonio where a Troxer Density gauge was found in a building that was being reconstructed. Radiation detector was reading 92 micro R per hour when the gauge was found. The gauge had been stolen a couple of years before. At that time a violation of enforcement was issued against the engineering firm responsible for it. Mrs. Rogers also reported that a graded exercise in South Texas had taken place in early August. The exercise was graded by FEMA and no major deficiencies were found. The agency also participated in a tabletop Ingestion Pathway Exercise the following day, which involved about 150 people from 50 different agencies.
- (2). Mrs. Rogers gave a summary of a federal team called FERMAC and their capabilities incase the state should ever need their support.
- (3) Mrs. Rogers closed by giving a recap of vacancies. Six new employees have been hired. They include 2 radioactive material inspectors in Houston, 1 in Midland, 1 mammography inspector, and a former TDH employee Ray Jisha who will be a Uranium inspector starting in October. Vacancies are radioactive material inspectors in Austin and Houston, 1 x-ray inspector in Houston, 3 administrative assistants in El Paso, 1 Emergency Response Planner for Pantex facility, 1 incident investigator, 1

Radiation Branch Manager. Only 76% of planned inspection for last fiscal year was

completed. Low pay and being unable to recruit qualify folks is starting to show up in numbers.

D. Radiation Safety Licensing Branch, Ruth E. McBurney, C.H.P.

- (1) Program vacancies include 2 engineers, 1 vacant over a year. DSHS has an application for disposal of 11e2 byproduct (waste from uranium waste processing) material, a major amendment to a waste processing license, and renewal a major in-situ uranium facility. Regarding 11e2 byproduct disposal application, DSHS will be conferring with TCEQ on areas where there are overlapping issues with uranium waste because this proposed facility is going to be next door to proposed low level waste facility. Similar socioeconomic issues and geology and engineering issue as well will be involved.
 - (2) Mrs. McBurney gave a report on the Regulatory Conference where 230 people attended. Staff is implementing revision of form of licensee to reflect new changes. Texas is still working with Food and Drug administration (FDA) on the application to become a state certifier on Mammography. The agency is working on regulations, policy and procedures.
- (V) Requested agenda items for next meeting are:
- (1) Recommended future agenda include 'staff and programmatic impacts' due to concerns over the Technical Assessments staffing shortages.
 - (2) Insurance as a means to fund the Radiation & Perpetual Care Account as a report from Mr. Mack
 - (3) Role and relationship of the TRAB vis-à-vis state agencies, state government, and the public as a report from the chair
 - (4) Implementation of Government Code § 418.178 regarding confidentiality of information about radioactive material that is "more than likely to be used in the construction or assembly of a nuclear weapon or weapon of mass destruction." As a report from the board.
 - (5) LAR – 5% reduction for recommendation

- (6) LAR – Proposed Health Physicist Classification for recommendations needs funding too support new staffing classification (\$350K/yr)

(VI) Public Comment

Mr. Don Darling, a retired naval officer living in Austin and an independent nuclear critic, stated the problems radiation control faces are due to root causes. He stressed that board and DSHS are not the root cause. He stated anti-nuclear activist blame the board for the difficulties in the nuclear business but activist had failed to see root cause. Mr. Darling stated that he has participated in doing programs in Austin Community Access Television and has interviewed advocates on a number of different issues. What he sees is that the anti-nuclear activists don't get root causes either because they present their issues with their own solutions as if those solutions would eliminate problems. Mr. Don Darling asked if anyone was interested in discussing root causes to call him at 512/258-0350. He stated that he has 47 years of nuclear history and experience in the radiation field and that he is appalled at what he sees has happened to radiation.

The next quarterly meeting is scheduled for December 11, 2004, in Austin, Texas.

The meeting adjourned at 1:08 p.m.

Respectfully submitted,

Elaine L. Wells, Secretary
Texas Radiation Advisory Board