

## TEXAS RADIATION ADVISORY BOARD MINUTES

3rd Quarter Meeting

August 19, 2006

Austin, Texas

Michael Ford, C.H.P., Chair, called the meeting to order at 9:05 a.m. Members present for the meeting were: Bradley Bunn; Bob Haley; Ian S. Hamilton, Ph.D.; Rick Jacobi, P.E.; Nora Janjan, M.D.; Mitchell Lucas; Odis R. Mack; Troy Marceleno; Rosana Moreira, Ph.D., P.E.; W. Kim Howard, M.D.; and Michael Walsh.

Members absent were: Earl Erdmann; Bruce Matson, D.D.S.; and Kevin Raabe.

Guests present: Ed Selig, Advocates for Responsible Disposal; Clay Hance, Hance Scarbrough Law; Don Darling; and Annette Glass, Representative Chisum's office.

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

Department of State Health Services (DSHS) staff present: Kathy Perkins; Richard A. Ratliff, P.E.; Ruth McBurney, C.H.P.; Cindy Cardwell; Tommy Cardwell; Ruben Cortez; Margaret Henderson; Gary Smith, Ph.D.; Jerry Cogburn; Susan Tennyson; Pete Myers; Bob Free; Bill Silva; Darice Bailey and Kim Flowers.

Texas Commission of Environmental Quality (TCEQ) staff present: Susan Jablonski, Devane Clark, and Jackie Hardee

Texas Railroad Commission (TRC) staff present: John Tintera.

### I. Guest Presentation – James Wright, UT, Permian Basin

Dr. Wright gave a presentation about the High-Temperature Teaching and Test Reactor Research Facility being proposed for development in west Texas, to be located near the University of Texas of the Permian Basin. The communities of Midland, Odessa and Andrews are contributing funds toward this project as part of their economic development package. They believe education is the key to economic development and the reactor research project will foster that environment in west Texas. The reactor features include higher efficiency and passive safety systems and will create less waste.

### II. Minutes of the June 24, 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.

Motion passed unanimously.

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

Mr. Mack covered these items he had discussed in conference with Mark Worman, of the Texas Department of Insurance:

(A) Market Availability

Mr. Mack explained that as of June 30<sup>th</sup>, 2006 there were two companies that were writing policies but that one of them has discontinued doing so because of a situation where they paid limits on a policy. He further explained that once a company pays limits on a policy, they move out of the market place. This company felt the only direction left to go would be with a surety bond. The second company indicated it would consider issuing environmental policies, but would look at financial stability of the customer very carefully.

(B) Possible Alternative to Traditional Insurance Markets

- OWL Insurance Company – This company offers a Well Life Well Plugging Insurance policy, actually for the oil and gas industry, that is a single policy that is paid upfront, permanent, for each single well, and is non-transferable. It is performance driven.
- Excess/Stop Loss Policy for the Perpetual Care Fund–Discussion with two insurance companies about the concept of providing an excess or stop loss policy that would provide excess coverage above a certain limit for catastrophic claims experienced by the perpetual care fund was held. The State Office of Risk Management (SORM) would need to be consulted and legislation would be needed in order to authorize such an arrangement.

(C) Types of Environmental Policies – Mr. Mack listed the types of policies:

- Clean-up Cost Cap Insurance Policy
- Remediation Stop Loss (Similar to Clean-up Cost Cap)
- Pollution Liability Policies
- Decontamination and Decommissioning Insurance Policy
- Closure and Post Closure Environmental Liability Insurance Policy

IV. Medical Committee(Howard, Matson, Janjan, Haley)

- (A) Recommendations of adoption of 25 TAC §289.230 Certification of Mammography Systems and Accreditation of Mammography Facilities, and of 25 TAC §289.234 Mammography Accreditation.

Cindy Cardwell addressed both items, as they were interrelated. She requested recommendation for adoption. The rules were previously reviewed by the State Health Services Council and Commissioner Hawkins approved their publication in the Texas Register for a 30-day comment period. Staff has addressed comments received. She explained that most comments and changes that were made were clarifying in nature.

On motion and second, the committee recommended adoption of the rules.

V. Fee Committee (Mack, Erdmann, Howard, Marceleno, Matson)

- (A) Proposal of 25 TAC §289.204 Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and other Regulatory Services.

Cindy Cardwell explained that along with changes to the mammography rules the Medical Committee reviewed, the mammography fees needed to be amended in order to put the funding that is now under a contract with FDA onto the state budget. If the state becomes a certifying entity, Texas mammography facilities will not seek certification from FDA, but will still pay a lesser fee to FDA. The Texas mammography fee increase will result in an effective increase of \$83.00 and will provide mammography registrants with the benefit of “one-stop shopping.” The staff asked the committee for a recommendation to propose the rule to send to the Health Services Council and on to Commissioner Hawkins in order to have them published in the Register for a 30 comment period, with hopes of having all three mammography sections being approved at the same time, with an effective date of April 1, 2007.

On motion and second, the committee recommended proposal of the rule.

VI. Committee of the Whole Board

- (A) Discussion and action on possible amendments to 25 TAC §289.202 to allow for DSHS recognition of NRC approvals of applications for alternative disposal made under 10 CFR 20.2002.

Cindy Cardwell addressed the board and provided copies of prior correspondence, including the letter that State Health Services sent to the NRC addressing some concerns that the state has with the NRC process for approving these exemptions under CFR 20.2002.

She also provided a Summary of the DSHS issues regarding the requested rulemaking. Concerns the state has are that NRC doesn't evaluate the types and quantities of existing materials at a specific site, an estimate of the total future radioactivity that may be at the site, whether or not AEA material is present at the site, and multiple types and quantities to be disposed of at the site. Tom Godard noted that because the NRC does not look at everything that DSHS would, it is very difficult to write a rule to make such exemptions.

DSHS staff believes that it is unlikely that they can draft a rule that is consistent with the statutory jurisdiction given to them, and that complies with their MOU with TCEQ, that says they will coordinate and come to a consensus on these issues. From the previous TRAB minutes, it was noted that one of the points to consider was to look at the potential or the possibility of not requiring separate rulemaking for this type of exemption. TRAB had suggested a parallel review by Texas staff might be done with each of the requests at the same time that the NRC is looking at their exemptions requests. TRAB previously recommended that Texas maintain its ultimate authority to reject the waste, and that the process still be streamlined. The staff advised the board that it does not feel that there is a way to reconcile this with a rulemaking at this time, with the various issues on the table. DSHS staff asked for a recommendation as to whether or not they should try to proceed with a way to amend the rules or cease efforts at this point. Susan Jablonski of TCEQ commented that Texas has the most flexibility of all states for its generators for ultimate disposal and this has been done successfully through the rulemaking case-by-case basis that currently exists. She believes that the process is working in Texas as it exists at this time. She indicated that a RCRA permit could even be amended to include radiological parameters to authorize the requested operations.

Tom Godard advised the board about exemptions. He stated that the ability to exempt from a rule or statute is rare. It is not typical that an exemption opportunity is provided. The Commissioner may allow an exemption through rulemaking if he finds that there is not a significant risk to health and safety. However, the Commissioner cannot delegate this duty.

The board concluded that they would come back with recommendations at the October TRAB meeting.

Rick Jacobi, a TRAB member, disclosed that he is a consultant for WCS and has a pecuniary interest in the matter and that he would not vote on this issue when it is presented for recommendation.

(B) Legislative Appropriations Request (LAR) for Radiation Control at DSHS

Richard Ratliff explained that through the directions of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy, each agency was to request only 90% of what they had appropriated during the previous biennium. DSHS did a risk analysis of each program and looked at the consideration of another agency being able to do the job if the funds were cut. Staff suggested the reduction come from the uranium program because the NRC would take it over since it is covered in a separate agreement from the rest of by-product materials. DSHS was contacted by the governor's office about removing uranium from the list for reductions. Instead, the staff has now suggested reductions come from lower risk x-ray such as dental, podiatry, veterinary, and from laser regulation. The first hearing on the LAR will be August 31<sup>st</sup> in Austin.

Kathy Perkins also provided further explanations about the difficulty of the decision making process, explaining that DSHS decided to distribute the cuts across the board and to use risk evaluation as a method of making those determinations.

(C) Resolutions in Honor of Previous Members

Michael Ford read final resolutions in honor of former board members Thomas Burnette and Elaine Wells. On motion and second, the board adopted these resolutions unanimously.

(D) Action by the full board on recommendations of all committees

On motion and second, the full board recommended unanimously:

- Adoption of 25 TAC §289.230
- Adoption of 25 TAC §289.204
- Proposal of 25 TAC §289.204 Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and other Regulatory Services

(E) Public comment

Don Darling commented that he sees religion and science competing and science becoming a religion in and of itself. He asked if firemen have all that they need to respond to nuclear disasters. Mr. Walsh replied that since September 11, there has been 10-fold improvement, but that to say

that they have “everything” would be inaccurate. Mr. Darling noted that he hopes forthcoming philosophy and physics will provide answers to the many complex issues.

IX. Presentation by staff regarding the Nuclear Regulatory Commission’s mandated increased controls for radioactive materials.

Board has decided to forego this presentation due to time constraints. Mr. Myers will make this presentation at the 4<sup>th</sup> quarter meeting.

X. Program Reports

(A) Department of State Health Services

A written report from Richard Ratliff was included in members’ packets. Richard also mentioned that staff met with both South Texas Project (STP) and Comanche Peak personnel regarding future plans and notifications. STP is proposing to the NRC to add two advanced boiling water reactors and plans to apply in 2007. Amarillo Power also plans to apply for two boiling water reactors in 2007.

Cindy Cardwell addressed a question that board member, Nora Janjan, M.D., asked at the June TRAB meeting regarding a comparison of the upcoming changes to rules in terms of the medical training and experience requirements. That information was included in the packets that were mailed to members. It consisted of a comparison of the training and experience requirements of the RSO, the licensed medical physicist, the nuclear pharmacist, and each of the authorized users for each of the modalities. The medical rules are currently being worked on and staff anticipates sending them to stakeholders next month.

Tommy Cardwell addressed questions from board members regarding performance based inspections. DSHS inspectors are doing a combination of techniques geared toward performance-based inspections.

(B) Texas Commission on Environmental Quality

Susan Jablonski introduced Jackie Hardie, who is the Division Director with the Waste Permits Division and handles the low level radioactive waste control applications, and Devane Clark, who is the Team Leader for the Radioactive Materials Team. The TCEQ program report was provided to TRAB members in their packets.

(C) Railroad Commission of Texas

John Tintera, who is the Assistant Director of Environmental Services for the Railroad Commission, mentioned that the Railroad Commission has approved funds for plugging the Winnie, Texas well. Those funds will be coming from the Oil Field Cleanup Fund which is funded by the oil and gas industry. The plugging is to be completed in the first quarter of the next fiscal year. RCT will then move ahead with the surface cleanup. The cleanup is estimated to be between 3 and 4 million dollars. The Perpetual Care Fund is now being discussed as a possible source and will be providing some funding toward the plugging and cleanup efforts. Mr. Tintera answered questions from the board regarding the cost of plugging and cleanup explaining that the cleanup is much more expensive than most they deal with because of the radioactive contamination. RCT also provided a written program report in the members' packets.

XI. Board Member Requests for Agenda Items for Next Meeting

- Presentation on the NRC's Mandated Increased Controls for Radioactive Materials
- Summary of Legislative Actions for the Spring session
- Discussion and action on possible amendments to 25 TAC §289.202 to allow for DSHS recognition of NRC approvals of applications for alternative disposal made under 10 CFR 20.2002

XII. Additional Public Comment

None

XIII. Next Meeting Date

October 14, 2006

Meeting Adjourned at 11:50 a.m.

Respectfully Submitted,

Mitchell Lucas, Secretary  
Texas Radiation Advisory Board