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**MINUTES**  
**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**WATER QUALITY BOARD MEETING**

Department of Environmental Quality  
Conference Room 101  
168 North 1950 West (Bldg. #2)  
Salt Lake City, Utah  
December 16, 1994  
9:30 a.m.

**UTAH WATER QUALITY BOARD MEMBERS PRESENT**

Bill Luce, Chair	Kay S. Jensen, Vice-Chair
Joe C. Nielson	Keith W. Welch
Leroy H. Wullstein, Ph.D.	R. Rex Ausburn
Pat S. Briggs	Dianne R. Nielson, Ph.D.
Lynn F. Pett	

**DIVISION OF WATER QUALITY STAFF MEMBERS PRESENT**

Don A. Ostler, Mary Fugate, Walt Baker, Jay Pitkin, Nancy Hess, Dave Wham, Tim Beavers, Bryan Atwood, J.D. McDonald, Mack Croft, Larry Mize, Fred Pehrson, Mark Novak, Harry Campbell, Kent Montague, Lisa Rogers, David Rupp, and Kiran Bhayani

**OTHERS PRESENT**

<u>Name</u>	<u>Organization Representing</u>
W. M. McDougald	Moab City
Donna Metzler	Moab City
Dale Pierson	Spanish Valley Water and S.I.D.
Grant Borg	Consultant to the Board
A. Dan Holyoak	Spanish Valley Water and S.I.D.
Vern Fisher	Sunrise Engineering/Spanish Valley S.I.D.
L. Paul Cloves	East Carbon City
Reed Noble	Creamer and Noble Engineering
Gene Van Wagoner	Ash Creek Sewer District
Darwin Hall	Ash Creek Sewer District
Brent Gardner	Ash Creek Sewer District
Bruce Dursteler	Past Board Member
Frankie Delliskave	Interstate Brick Co.
Neal Cline	Tooele County
Kimball Young	East Carbon City
Tom Stock	Moab City
Al Anderson	Montgomery Watson Engineers

Glen Eurick	American Barrick
Reed N. Fisher	Central Valley Water Reclamation
Dan Matthews	Wasatch County
Pete Coleman	Wasatch County
LeeRoy Farrell	Wasatch County
Shelly Cordon Teuscher	Parsons Behle & Latimer
Phil Wright	Wasatch City/County Health Department
Bob Mathis	Wasatch County
Dennis Jensen	Wasatch County
Arthur Shoemaker	USDA Natural Resources Conservation
Service	
Marv Allen	Hansen, Allen and Luce, Inc.
Greg Poole	Hansen, Allen and Luce, Inc.

Chairman Luce called the meeting to order at 9:12 a.m.

#### **APPROVAL OF MINUTES FROM OCTOBER 28, 1994 MEETING**

Dr. Nielson moved that the minutes of the October 28, 1994 meeting be approved with a single correction: that the actual hearing date (December 13, 1994) for the reuse rule be added. The motion was seconded by Mr. Jensen and carried by a vote of 7-0. Mayor Pett abstained.

#### **RECOGNITION OF RETIRING WATER QUALITY BOARD MEMBER A. BRUCE DURSTELER**

Chairman Luce presented Mr. Dursteler with a plaque in recognition of his valuable service as a member of the Water Quality Board for the past four years. Mr. Luce read a letter of commendation from Governor Leavitt. Mr. Dursteler expressed his appreciation to the staff and each member of the Board for the time they had served together.

#### **WASTEWATER LOAN PROGRAM ACTIONS**

- A. Financial Status Report** - Ms. Nancy Hess reported on the financial status of the Division's wastewater project loan programs as outlined under Tab C of the Board's Packet. Ms. Hess also distributed a summary of the State Revolving Fund loan program (Attachment I).
- B. Ash Creek Improvement District (first hearing)** - Mr. J.D. McDonald briefed the Board on the proposed project as outlined under Tab C of the Board's Packet. Mr. McDonald said that the Ash Creek Special Improvement was formed to serve the communities of Hurricane, LaVerkin and Toquerville in Washington County. The District completed a treatment facility and began

operation in 1985. The facility was designed to serve a year 2005 population of 7,400. He said that since the construction of the facility, the growth rate has been greater than anticipated. The present population, and resulting sewage flow, is at 95% of the design capacity.

Mr. McDonald said that the District is proposing an upgrade of the existing lagoon system by adding aeration, adding a new lagoon cell and by increasing the efficiency of land application. He said that the project costs are estimated at \$2,371,000.

Chairman Luce asked if the possibility of a regional facility had been evaluated. Mr. Gardner said that this was not a cost-effective alternative, noting that it was approximately 17 miles to the St. George Regional Wastewater Treatment Facility.

Mr. Ausburn asked what the connection fees were. Mr. Gardner said that the current connection fee was \$1,000 per equivalent residential user (ERU). He said that the District was looking at increasing the fee to \$1,500. Mr. Ostler asked what the current monthly user rate was. Mr. Gardner said that it was \$15.00 per household.

Mayor Pett asked about the District's position of 35 on the project priority list and what effect funding this project would have on others on the list. Mr. Baker said that the top 20 or so projects on the list are currently in construction or planning, so that Ash Creek's position is really much higher than it appears.

**C. East Carbon City (first hearing)** - Mr. Tim Beavers introduced the Board to the proposed project as outlined under Tab C of the Board's Packet. Mr. Beavers said that City's wastewater collection system was built in the 1940's out of vitrified clay tile pipe. Little improvement to these systems have been made since the original construction. Due to the age of the system, the City would like to replace the lines with new pipe.

Mr. Beavers said that the total cost of the project is estimated at \$2,057,500. He said that the City is looking to obtain a 20 year low interest loan from the Board for slightly over \$1.0 million. He said that the City is working with the Farmer's Home Administration to obtain financing for the balance.

Mr. Beavers noted that the mining industry in the area has been replaced with one of the largest solid waste landfills in the United States owned by the East Carbon Development Corporation (ECDC). The ECDC facility began operating in 1992 and currently accepts approximately 1,000,000 tons of waste per year. The City of East Carbon and ECDC have an agreement that ECDC will pay the City \$0.50 per ton from the tipping fee. The tipping fee will be increased by

\$0.50 per ton every ten years until 2023 when the tipping fee will be \$2.00 per ton. The agreement between the City and ECDC expires in 2033 at which time the agreement will be renegotiated. Mr. Beavers said that the staff has reviewed the proposed schedule of cash flows and debt service coverage and is of the opinion that the proposed revenues from tipping fees are more than adequate to meet the debt obligations which the City will incur if the planned infrastructure projects are financed as proposed and anticipated tipping fees occur.

Mr. Jensen noted that the current monthly user fee of \$4.50 was very low. He suggested that the need for the project could have been anticipated, and the fees could have been elevated so that the City would be able to provide a larger up-front contribution for the project.

Mr. Beavers said that a special referendum was held during the first week of December on three projects being undertaken by the City; natural gas, sewer, and road repairs. Each of the proposals passed by an overwhelming margin. He said that the election also gave the City the ability to use tipping fees from the East Carbon Development Corporation's landfill to fund infrastructure projects.

Mayor L. Paul Clark said that the City is ready to proceed. He noted that timing of the project is critical so that the city is able to upgrade the sewer in conjunction with the water and gas projects in the spring of 1995.

- D. Moab City (first hearing)** - Mr. Atwood briefed the Board on the proposal as outlined under Tab C of the Board's Packet. Mr. Atwood said that the original treatment facility was constructed in the early fifties and provided primary treatment only. Subsequent upgrades to the facility in 1967 and 1983 added secondary treatment capabilities and expanded the capacity to 1.3 mgd but did not provide for redundancy in the primary and final clarifiers.

He said that the proposed project consists of upgrading/expanding the treatment facility and constructing a new interceptor sewer and collection lines to serve the northern part of the City. The treatment plant upgrade/expansion will include the construction of a new influent lift station, headworks, primary clarifier, secondary clarifier, drying beds, septage dump station, emergency generator facilities and miscellaneous sitework and yard piping. Also included are modifications to the plant pump stations, trickling filter distributors and flow control structures. With these upgrades the capacity of the facility will be increased to 1.5 mgd which will satisfy the wastewater treatment needs of Moab and the Spanish Valley Water & Sewer District for the next 5 to 10 years depending on the rate of growth that occurs. The facility will also have the redundancy required by current wastewater regulations. The Spanish Valley

Water & Sewer District will be participating in 20% of the cost of the treatment plant portion of the project.

Mr. Atwood said that the cost of the project is estimated at \$2,945,600. Cost sharing on the project is as follows: local contribution \$750,000 (25.5%), Spanish Valley W&S Dist. \$485,200 (16.5%); CIB Loan \$855,200 (29.0%); WQB Loan \$855,200 (29.0%).

Mr. Atwood said that the project is necessary for Moab City to continue to meet the wastewater treatment needs of the area and to bring the facility in line with current wastewater treatment regulations. He said that the project will also eliminate plant bypasses that have been necessary with the current facility when maintenance or repair activities have been performed. The interceptor and collection lines proposed as part of the project will allow the City to provide improved sewer service to areas of the community that currently have inadequate sewer service. Mr. Atwood said that staff supports the funding application and will have a recommendation concerning funding terms at the second hearing of the project by the Water Quality Board.

- D. Spanish Valley Water District (first hearing)** - Mr. Atwood briefed the Board on the proposal as outlined under Tab C of the Board's Packet. He said that the Spanish Valley Water & Sewer District is a special service district organized to provide services of water, sewer and other needed improvements for the unincorporated areas of Grand County south of Moab City. The District operates a culinary water system and a wastewater collection system. Wastewater from the District is treated at the Moab City wastewater treatment facility through a contract with Moab City.

Mr. Atwood said that since the original collection system was installed, there has been considerable growth in areas of the District which did not have sewer service available. As a result, 1/3 to 1/2 of the District area is currently unsewered and relies on septic tank/drainfields for disposal of wastewater. Of concern to the District is the proximity of the developing areas to wells and springs which provide the supply for the culinary water system.

Mr. Atwood said that the growth has also had an affect on other aspects of the District's system. Because of the increased flows to the collection system, the main interceptor line that conveys wastewater from the District's system to the Moab City system is at or nearing capacity. The District has reported that on two occasions wastewater flows have been greater than the capacity of the interceptor line resulting in overflowing of wastewater at a manhole. This interceptor line needs to be enlarged.

The growth in the area has also made it necessary for Moab City to upgrade and expand its treatment facility. Since the Spanish Valley District is contributing to the increase in wastewater flows, funding of a percentage of the expansion will be its responsibility.

Mr. Atwood said that the proposed project consists of three components: 1) upsizing of the main interceptor; 2) extending collection lines to developed areas which are currently unsewered; and 3) funding Spanish Valley's share of the Moab City Wastewater Treatment Facility expansion project.

He said that the District's share of the Moab City treatment plant expansion is 20% of the total cost of expansion. This is based on the number of equivalent residential connections for each entity. The upgrade/expansion will increase the capacity of the facility to 1.5 mgd and will provide for a more flexible treatment process and a more reliable operation.

Mr. Atwood said that residents of the District pay an average monthly user charge of \$16.41 and are assessed an average property tax for sewer service of \$3.23 per month which results in an average monthly cost for sewer service of \$19.64. This is 1.33% of the median adjusted gross household income. Connection fees are \$2,000.

Mr. Atwood said that the total cost of the proposed project is estimated at \$2,909,200. Proposed cost sharing for the project is: local contribution \$324,000 (11.1%); PCIB Grant \$359,000 (12.4%); FmHA Grant & Loan \$780,000 (26.8%); WQB Grant & Loan \$1,463,000 (50.3%). He said that a recommendation on the funding application will be presented at the second hearing of the project by the Water Quality Board.

Mr. Ausburn asked if the district was extending sewers into existing subdivisions why they are not doing that under assessment districts rather than funding it themselves. Mr. Pierson said that it was one of the options the district would be looking at in some of the more remote areas. Mr. Ausburn said that the application was asking for a 0% loan, over a 25 year period, and \$750,000 in hardship grant funds. He noted that all three figures are stretching the limits of what the Board typically approves. Ms. Hess noted that this was still a preliminary funding package, and that a number of funding options still need to be explored.

**AUTHORIZATION FOR PUBLIC HEARING ON WASATCH COUNTY'S PETITION  
TO CLASSIFY AQUIFER**

Commissioner Pete Coleman introduced the County's request, saying that the County was revising their comprehensive general plan. He said that the County views

ground water quality as the most crucial element that will influence residential and other types of growth in Wasatch County. The county serves as a primary watershed, providing water to Salt Lake and Utah counties, having a population of nearly 1 million people. He said that aquifer classification will provide the necessary scientific background and the tools for establishing and enforcing regulations to protect our water quality. The petition has been reviewed by the County Health and Planning Department, and the County Commission. Commissioner Coleman said that the County is committed to enforce this important classification.

Mr. Dan Matthews summarized the County's petition. He said that the County was proposing classification of two different areas: 1) the region above Deer Creek Reservoir as a Class 1A (Pristine Ground Water) aquifer; and 2) a region in the Midway area as a Class II aquifer. He said that the County feels that the timing of receiving an aquifer classification is important considering current growth patterns and their desire to preserve the ground water in its current pristine condition. Mr. Matthews said that the County believes that they have the technical information to back up their request, and discussed a hydrogeologic study on the area completed by consultants Hansen, Allen and Luce. He discussed zoning issues, proposed growth, impact of septic tanks on the aquifer, and ground water recharge areas. Mr. Matthews also discussed current steps that the County is taking to protect the groundwater in the area.

Mr. Matthews requested that the Board set a date for a public hearing to invite comments from interested parties.

Mr. Mize stressed the importance of this action, saying that it represents an opportunity to be consistent with the state's overall groundwater protection program. Mr. Ostler discussed the provisions of the Ground Water Rules which allows the Board to classify an entire aquifer based on the quality of the water. He said that each of the four classes of aquifers have built-in protection criteria with greater protection for high quality waters, and lesser protection for lower quality waters. Mr. Ostler noted that this provision of the rule has not been used since the enactment of the Ground Water Rules in 1989. He said that if the Board chooses to pursue classification of this aquifer, it will be a major precedent.

Mr. Ostler said that the staff believes that this is a model approach for being proactive and protecting ground water. He said that the staff was anxious to have someone move forward and initiate a classification request so it can serve as a model and catalyst for other communities in the state. Mr. Ostler said that the staff views Wasatch County's request as a major positive step. He said that the data and technical information submitted by the County is sufficient for the Board to take action to classify the aquifer.

Mr. Jensen asked what the potential negative aspects of the classification might be. Mr. Mize said that the classification can restrict certain land uses, depending on their impact to ground water and the classification of the aquifer. Commissioner Coleman said that he thought that there might be some local opposition to the action, and that the public meeting would give those individuals an opportunity to give their input. Mr. Wright said that the County's public information efforts have gone a long way in convincing the residents of the value of this approach. He said that some individuals who had intended to develop small lots with septic tank/drainfield systems may still voice opposition. Mr. Dennis Jensen said that in meetings held with developers and other landowners, they had been quite surprised with the level of support.

**Action Taken:** It was moved by Dr. Wullstein, seconded by Ms. Briggs and unanimously carried that the Board take the request for aquifer classification to public hearing.

**GROUND WATER REGULATIONS REVISIONS REGARDING PERMIT-BY-RULE  
FOR ANIMAL WASTE, MUNICIPAL LAGOONS, AND MUNICIPAL SEWAGE  
SLUDGE**

Mr. Novak briefed the Board on the proposed rulemaking action as outlined in a memorandum under Tab D of the Board's Packet. He said that the staff proposes to amend the Ground Water Protection Regulations to grant ground water discharge permit-by-rule to small animal waste lagoons, to land application of municipal sewage sludge in accordance with new federal rules, and to municipal waste lagoons with no significant industrial dischargers. He said that these changes will help to avoid undue regulatory burden on farmers and municipalities for facilities with only a small potential threat to ground water quality, and will allow the Division to utilize its resources more effectively to regulate greater threats.

Mr. Ostler related a comment by Ms. Bunker who asked to be excused from the meeting due to a scheduling conflict. Mr. Ostler said that Ms. Bunker wanted to convey her concern and interest in this change in the Ground Water Rule as it pertains to animal waste regulation, primarily R317-6.2(A)(17)&(18). She said that she personally felt comfortable with those changes but she specifically was interested in hearing feedback from anyone representing the agricultural community.

Mr. Ostler stressed that even though a facility may not be required to submit a ground water permit, it is still regulated by the Division of Water Quality, through the construction permit process.

Mr. Ostler introduced Art Shoemaker, representing the USDA, Natural Resources Conservation Service (NRCS). Mr. Shoemaker said that he had worked quite extensively with a group represented by Utah State University Extension, NRCS, Utah Department of Agriculture and DEQ in evaluating the DWQ's criteria for animal waste operations. He said that the group feels very comfortable with the proposed changes and would like to see them adopted. He said that they feel that new language would streamline the process while maintaining control for the protection of groundwater.

**Action Taken: It was moved by Mr. Jensen, seconded by Mr. Welch and unanimously carried that the Board authorize the staff to initiate rulemaking for the proposed changes to R317-6 as outlined in the staff's recommendation.**

**REVISION TO R317-1-2 REGARDING CONSTRUCTION PERMITTING FOR SMALL  
ANIMAL WASTE LAGOONS - APPROVAL TO INITIATE RULEMAKING**

Mr. Jay Pitkin briefed the Board on the proposed rulemaking action as outlined under Tab E of the Board's Packet. He said that most of the small facilities that are constructed for animal waste are designed by the Natural Resources Conservation

Service (NRCS). He said that currently, these designs then come to the Division, where they are reviewed again for issuance of a construction permit. He said that this is really a duplication of effort because the NRCS and the DWQ have come to agreement on the criteria that these facilities must meet. He said that the staff is proposing to modify the rule to allow plan review, approval and construction inspection to be done by the NRCS consistent with agreed upon criteria. Plans will not need to be submitted to the Division of Water Quality. This will avoid duplication of effort between our two agencies, and speed up the review and approval process.

Mr. Pitkin identified two additional changes to the rule under R317-1-2.5(B): 1) The phrase *U.S. Natural Resource Conservation Service (NRCS)* would be replaced by *U.S.D.A. Natural Resources Conservation Service (NRCS)*, and 2) the phrase *and the construction is supervised by the NRCS* would be replaced by *and the construction is inspected by the NRCS*.

Ms. Briggs asked if the NRCS had adequate personnel and funding to conduct these inspections. Mr. Ostler said that the State Director of the NRCS was not in favor of anything that would bind them to do work beyond what they have the ability to do. He said that the rule change only states that if they have the resources, and they do prepare a design for a someone, that we can consider it as having met our requirements.

**Action Taken:** It was moved by Mayor Pett, seconded by Mr. Ausburn and unanimously carried that the Board authorize the staff to initiate rulemaking for the proposed changes to R317-1 as outlined in the staff's recommendation.

#### ADOPTION OF CHANGES TO R307-1-6, SALES TAX EXEMPTION PROGRAM

Mr. Jay Pitkin briefed the Board on the proposed rulemaking action as outlined under Tab G of the Board's Packet. Mr. Pitkin said that the 30 day comment period for the proposed change in R307-1-6 closed on November 15, 1994. A hearing was held on November 3, 1994. The only attendees were staff members from the State Tax Commission and DEQ. No oral comments were given.

Mr. Pitkin said that written comments were received from the law offices of Parsons Behle & Latimer, in behalf of the Utah Industry Environmental Coalition (the Coalition), and from the law offices of Kimball Parr Waddoups Brown & Gee.

Mr. Pitkin said that the Coalition supported the rule change but requested that DEQ confirm that applications that were submitted in a substantive form prior to July 1, 1994 would be reviewed under the old statute. He said that the Coalition further suggested that a work group similar to that established in 1993 (which consisted of

industry representatives and members of the Air and Water Quality Boards) be established to consider further revisions to the rule to try and define what *primary purpose* might mean. Mr. Pitkin said that the staff felt that a lot of work was done last year by the work group in this regard, and did not think that the boards would consider another effort in this regard to be worthwhile.

Mr. Pitkin said that comments submitted by Kimball, Parr, Waddoups Brown & Gee recommended that the rule language be similar or exactly the way the language is written in the statute. He said that the Attorney General's Office and the DEQ staff felt the *primary purpose* language should remain in the rule, as the definition of *pollution control facility* in the 1994 change of the statute includes *primary purpose* wording.

Mr. Pitkin noted that the Air Quality Board adopted the proposed rule on December 15th, 1994. He said that the staff recommends adoption by the Water Quality Board.

**Action Taken:** It was moved by Mr. Jensen, seconded by Dr. Wullstein and carried by a vote 7 - 0 that the Board adopt the proposed changes to R307-1-6 as outlined in the staff's recommendation. Mr. Ausburn abstained.

### STAFF REPORTS

A. **Operator Certification Update** - Mr. Reed Fisher said that as of January 1, 1995, all treatment facilities and collection systems are required to have certified operators. He said that the whole purpose of mandatory certification is to encourage owners of these facilities to train their people properly to do their job. Mr. Fisher said up to now, each of the entities who had not been certified have been notified of that fact, and encouraged to do something about. Mr. Fisher said that if facilities do not meet the deadline, the Certification Council feels that a Notice of Violation should be sent out, perhaps giving the facility 30 days to respond as to why they have not complied with the law. He further recommended that those facilities which remain recalcitrant be fined, and suggested that perhaps half of the penalty could be waived if training and testing is completed and certification occurs. He said that the Certification Council did not feel that facilities could be allowed to go an additional 30 or 60 days without a compliance action, because this would give the wrong message to those which have come into compliance.

Dr. Nielson agreed that it was important for communities to understand that this is a requirement that does have to be complied with and in fact does have some impact if it is not met. However, she suggested that perhaps if there is a

penalty, that the funds could be applied to covering costs related to getting them certified.

Mr. Fisher agreed, stating that is why the Council recommended that half of any fine would go towards solving the problem. He said that the recommendation was that half of the fine would be waived upon achieving certification, and the other half would need to be used for the purpose of achieving certification.

- B. Enforcement Update, Metro West Ready Mix** - Mr. Harry Campbell summarized the enforcement action as outlined under Tab H of the Board's packet. Mr. Campbell said that the Company was issued two separate Notice of Violations and Orders for illegal discharges to the Salt Lake County storm sewer system and to Holmes Creek. He said that the Division had recently reached a settlement agreement with the Company, resulting in a negotiated penalty of \$2,200 for each site.

**The Board recessed for lunch at 12:45 and reconvened at the Second Floor Conference Room of the Department of Agriculture Building at 1:00 p.m.**

**APPEAL HEARING ON SUNNYSIDE COGENERATION ASSOCIATES' SALES TAX EXEMPTION REQUEST**

**Board Members Present:** Bill Luce, Kay S. Jensen, Joe C. Nielson, Keith W. Welch, R. Rex Ausburn, Pat S. Briggs, Dianne R. Nielson, and Lynn F. Pett

**Staff Present:** Don A. Ostler, Mary Fugate, Jay Pitkin, Dave Wham, Larry Mize, Fred Pehrson, Mike Herkimer and Kiran Bhayani

**Others Present:** Fred Nelson, AG's Office; Melissa Hubbell, A.G.'s Office; Alane Boyd, SCA; Scott Carlson, SCA; Brian Burnett, SCA; Fred Finlinson, SCA; Henry Sauer, DOGM; Monti Keller, DAQ; Max Miller, Parsons Behle & Latimer; David Tundermann, Parsons Behle & Latimer; Cory Canon, SCA

Mr. Fred Nelson said that the hearing was being conducted as an informal hearing under the provisions of the Administrative Procedures Act. He said that the Board's action represents the final level of administrative appeal in this matter. Mr. Nelson suggested that the staff introduce the topic to the Board, to be followed by statements by Sunnyside Cogeneration Associates (SCA) and the State.

Mr. Pitkin said that on June 30, 1994, a revised application was received from SCA for certification of their Circulating Fluidized Bed [CFB] Boiler and Coal Conveying

and Blending System at Sunnyside Cogeneration Facility as pollution control facilities. He said that based on review of the submitted information and criteria set forth in R307-1-6., *Utah Administrative Code*, and §19-2-124, *Utah Code Annotated*, the staff made the determination that they could not certify the boiler, and the conveyor system, as pollution control facilities for exemption from payment of sales tax. He said that on August 22, 1994, the Division of Water Quality denied SCA's request. Mr. Pitkin said that SCA's request was considered under the old statute, as the application was received prior to July 1, 1994, when the current statute came into effect.

Mr. Fred Finlinson discussed the background of the 1981 pollution exemption statute. He discussed the background of the federal Public Utility Regulatory Pricing Act (PURPA) saying its purpose was to encourage the development of alternative energy sources. He stressed that the SCA project never would have been built if the concept of eliminating the waste coal pile had not been at the forefront of all decisions. He said that the Federal Energy Regulatory Commission (FERC) has determined that SCA's waste coal refuse pile constitutes waste and has approved the project as utilizing waste material. He noted that FERC never would have given the SCA project qualifying facility status if the project had not utilized the waste coal refuse pile. Mr. Finlinson also discussed the provision under which large power companies are required to buy power from small energy producers like SCA. He said that Utah Power and Light would never have signed the Power Purchase Agreement, SCA's only source of revenue, unless the SCA project utilized the waste coal refuse pile as required by FERC. The SCA Project never would have been financed without showing that the SCA Project was disposing of a waste which is a requirement of the Solid Waste Disposal Refunding Revenue Bonds funding the project. He said that bonds of this type can only be utilized for projects which qualify for tax exempt status because of their waste disposal aspects. Mr. Finlinson then gave an overview of the location and operation of the SCA Project through the use of slides and maps, including several slides showing seeps that emanate from areas below the coal waste pile.

Mr. Burnett summarized SCA's legal position. He discussed the definition of waste under the Water Quality Act, FERC requirements, and the criteria of the Solid Waste Disposal Refunding Bonds, stating that SCA's Coal refuse pile meets all of these criteria. He added that the Office of Surface Mining (OSM) has ruled that they will not charge the facility an abandoned mine land reclamation fee on each ton of coal used as is the case for regular coal (non-waste) operations.

Mr. Burnett said that the statute says that a facility qualifies for the exemption if a substantial purpose of the use, erection, construction, acquisition, or installation is the prevention, control, or reduction of air or water pollution. He said that SCA facility had incinerated 600,000 tons of waste to date, and will ultimately burn approximately 10 million tons.

Mr. Burnett cited the Water Quality Act's definition of *pollution*, arguing that the coal pile is currently creating water pollution in seeps emanating from areas below the pile. He said that chemical analyses conducted on the seep water show elevated levels of contaminants which are significantly higher than those found in surrounding, unaffected sources. He also said that the Division of Oil, Gas and Mining (DOGGM) has determined the coal refuse material to be acid and toxic forming under their definitions, and if they eliminate the waste coal pile this will reduce this problem.

Mr. Burnett discussed the significance between the *a substantial purpose* language of the old statute and *the primary purpose* language of the revised statute. He said that when the legislature changed the statute, effective July 1, 1994, to the primary purpose language, they attached a fiscal note saying that the change would result in the State collecting \$1,685,000 more in sales taxes in 1995, and \$1,750,000 more in sales taxes in 1996.

Dr. Nielson asked what would happen to the coal pile if for some reason all of it was not used. Mr. Burnett said that they would be required to reclaim the coal pile as per their DOGM permit. Mr. Finlinson said that DOGM currently holds a \$1.5 million reclamation bond to ensure that the pile is reclaimed.

Mr. Welch made the observation that the facility transfers a percentage of the waste's toxicity through the system (ash) where it still needs to be disposed of and capped. Mr. Burnett said that the ash material is not being placed into a natural drainage, it is being disposed of in an approved landfill.

Mr. Ausburn asked about the financial details of the exemption request. Mr. Burnett said that the CFB Boiler costs about \$23 million. He said that SCA have asked for half of that from the Water Quality Board and half from the Air Quality Board. Along with the coal handing facilities this would result in a tax savings of approximately \$840,000.

Ms. Melissa Hubbell noted that while many people, including FERC, DOGM and DWQ, may support the project and feel that SCA is accomplishing a good thing, this does not mean that they qualify for a pollution control exemption under the statute. She said that the State has looked long and hard at SCA's request and have given SCA every exemption possible under Utah law.

Ms. Hubbell said that a facility qualifies for the exemption *if a substantial purpose of the use, erection, construction, acquisition, or installation is the prevention, control, or reduction of air or water pollution*. She said that while SCA is eliminating a waste coal pile, they are not preventing, controlling or reducing air or water pollution. She noted that the boiler and the coal conveying structures do not provide that function. Ms. Hubbell said that regulations put in place last year to clarify the statute state that a qualifying facility must demonstrate a reduction in pollutant discharges. Also, that

application for exemptions shall be certified only if the water pollution control facility eliminates or reduces the discharge of pollutants which would be regulated by the Water Quality Board.

Ms. Hubbell said that the issue is not whether FERC or DOGM or someone else thinks that the coal pile is a pollution source or that removal is a positive action, the statute requires a substantial demonstrated measurable reduction. She stated that the waste coal pile has not been demonstrated to be a contamination or pollution source, and even if it was, we would not see a measurable reduction for 30 years.

Ms. Hubbell said that the substantial purpose of the SCA facility is to create electricity and that getting rid of the coal pile, if it were a source of pollution, is simply a by-product.

Ms. Hubbell discussed the findings of the *Owens-Illinois Inc. v. Town of Bradley* case cited by SCA, stating that the differences between it and SCA's request were significant. She cited the findings of *Ethel Corporation vs. Adams*. In this case, the owners were dumping tree bark, resulting in acidic conditions. New dumping regulations were put in place, so the company installed a cogeneration boiler, fueled by the bark. She said that the court found that the function of the boiler was not to reduce or eliminate waste pollution. Even though the bark was found to be a source of water pollution, and the bark oil boiler was utilized primarily to dispose of or eliminate Ethel's Bark, the boiler in no way abated the extensive water pollution which had been created by piles of bark that Ethel has dumped throughout the areas over the years, because that pollution will persist for a period of at least 20 years.

Mr. Welch noted that there had been some discussion of the terms *demonstrated* versus *measurable*. He said that he was a member of the ad-hoc committee that worked on the rule change. Mr. Welch said that when they discussed this change, the committee felt that the term measurable meant that a company would have to provide hard facts, i.e, laboratory-type data. He said it was changed to demonstrated in the hopes that we could also use computerized predictive models, etc.

Mr. Finlinson said that the professional opinion of SCA's engineers, after analysis and study, is that removal of the waste pile will result in a reduction of pollution. He said that they feel that they have demonstrated a reduction in pollution under the regulations.

Ms. Alane Boyd said that it was her feeling that waters seep through the material in the coal refuse pile, pick up chemicals and come out at the base of the coarse refuse pile. She said that water from other springs and seeps along this drainage basin had considerably better quality than that of the coal refuse seep.

Mr. Ausburn asked what the concern was over the 30 year period of reduction, noting that he did not see where the statute required the pollution prevention to occur over a certain period of time. Ms. Hubbell said that there was nothing in the law which addressed this issue. She said that she just wanted to point out that if there is pollution, it will continue to pollute until the end of the period. She said that it was unclear if we were to grant the exemption, do we give it now, do we give it at the end of the 30 year period, or do we give it over the 30 year period.

Mr. Burnett asked Ms. Boyd if she thought that the coal waste would cause pollution. She said yes, because water percolates through it and picks up TDS, iron, manganese, and boron. Mr. Luce asked if these constituent are removed by that facility. Ms. Boyd answered that she believed they were. Mr. Finlinson said that the metals and other constituents in the ash are deposited in an approved landfill. Mr. Burnett said that when they received their groundwater permit, they were not required to have a liner, because we would not affect groundwater negatively based on what was in the ash. Dr. Nielson asked if the landfill was certified as a pollution control facility. Mr. Burnett said that the materials for the sedimentation basin were.

Mr. Burnett reiterated the main points of SCA's appeal.

Mr. Jensen asked Ms. Hubbell if it was the State's position that it has not been proven that there is pollution in the water from the coal waste pile, and that it also has not been proven that the elimination of the waste pile would reduce or eliminate that pollution. Ms. Hubbell said that was true, and further, that the relationship between the boiler and the coal handling facilities and pollution control is more nebulous and tenuous than was intended by the statute.

Chairman Luce asked Mr. Nelson what the Board's options were. He said that the Board could grant the exemption, deny the request, or grant only a portion of the request.

**Action Taken:** Mr. Jensen moved to deny the appeal. The motion died for lack of a second. Dr. Nielson moved that the Board grant certification for the circulating fluidized boiler and deny certification for the coal handling facilities. The motion was seconded by Ms. Briggs and passed by a vote of 4 to 3, with Dr. Nielson, Mr. Welch, Ms. Briggs and Mr. Nielson voting in favor; and Mayor Pett, Mr. Jensen and Mr. Ausburn voting against.

#### NEXT MEETING OF THE BOARD

The next meeting of the Board was scheduled to be held in Salt Lake City on January 20, 1994, at 9:00 a.m.

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Minutes approved at the January  
20, 1994 Water Quality Board  
meeting in Salt Lake City