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TESTIMONY

To: Senate Committee on Environment and Natural Resources

From: Ken Niles, Assistant Director Nuclear Safety
Jeff Burrigh, Nuclear Waste Remediation Specialist

Date: June 4, 2020

Re: Radioactive Waste Disposal at Arlington Landfill

Good afternoon, Chair Dembrow, members of the Committee.

I am Ken Niles, the Assistant Director for Nuclear Safety at the Oregon Department of Energy.

On February 20 we appeared before this committee to provide you with information about the radioactive waste disposed in the Chemical Waste Management Arlington facility, which was in violation of Oregon law. I appreciate the opportunity to provide you with an update on what has been happening since then.

Our previous appearance before this committee came just one week after we issued a Notice of Violation to the owner of the landfill. As you'll recall, the landfill had accepted two and a half million pounds of Technologically Enhanced Naturally Occurring Radioactive Materials, or TENORM, over a three-year period. That waste came from the Bakken Oil Fields primarily in North Dakota.

As I mentioned in February, our Notice of Violation did not include any monetary fines as the violation did not meet any of the criteria in our existing rules to subject the landfill operator to civil penalties. We'll talk about what we're doing to strengthen our ability to assess penalties a bit later.

In our Notice of Violation, we required the company to develop a Corrective Action Plan to explain the processes they will put in place to prevent re-occurrence and to conduct a Risk Assessment to evaluate potential past, present, and future risk from the waste that is already buried. This assessment will also help us make the best decision for what will happen to this waste.

We told you at the time we thought these documents could be ready by early spring. The company asked for more time to develop these documents and we agreed that taking the additional time was important to address these issues correctly. However, to respond to the high degree of public interest and concern regarding this situation, we directed the company to provide a number of interim documents by April 30 and one additional document by May 29. They have provided these documents and they are posted on our agency web site. They include annotated outlines of both the Risk Assessment and the Corrective Action Plan; an evaluation of past and present worker doses and risks; an explanation of the radiological survey plan for the facility; and a technical discussion of the facility's leachate management system.

The final version of these documents will be delivered to the agency no later than September 1. We have had ongoing discussions with the company and with their contractors and we are in agreement with the scope and methodology they are taking to develop these documents.

In addition to working with the company to provide the necessary documents and information, the agency has also continued its engagement with the public and interested stakeholders. At the invitation of the Gilliam County Court, we met with the County Court in Condon on the afternoon of March 4, and then participated in a public meeting that evening in Arlington. There were a lot of questions and expressions of concern.

The following week, the director and I met with the Warm Springs Tribal Council.

And then all in-person meetings stopped because of the Coronavirus. We have continued to have regular meetings with Chemical Waste Management and its contractors. Our staff has also continued to field phone calls and respond to questions from the public about the situation.

When the documents are delivered to us at the end of the summer, there will be a public comment/review process. If people are at that time able to gather in groups, then we'll likely return to Arlington for an additional public meeting. If not, we will provide for a virtual method to engage folks and get their input.

There are really three decisions ahead for our agency. The first is whether the technical analysis is sufficient. We've been having on-going meetings with Chemical Waste Management and their contractors, and as I indicated earlier, so far we are in agreement with the work they are doing.

The second decision for us is whether the actions that the company is proposing to take are sufficient to ensure that something like this doesn't happen again. They have already made some procedural changes in the interim to better screen for radioactivity in their wastes, which

they've discussed with us as we've gone along, and the Corrective Action Plan will provide additional details of the steps the company has taken and will take in the future.

Finally, we'll have a decision to make as to whether the waste that was disposed at Arlington can remain in place or whether it should be removed. The Risk Assessment will explain the short and long-term risks associated with each of those actions.

During our first appearance before this committee, we talked about the need for changes to our Administrative Rules and Statutes, and my colleague Jeff Burrigh is going to cover that topic.

Chair Dembrow, members of the committee, my name is Jeff Burrigh and I am the lead technical staff on this issue within the Nuclear Safety Division at ODOE. I wanted to provide you a forward-looking update about the potential changes to Administrative Rules and Statute that we anticipate may be necessary to ensure a situation like this doesn't happen again. There are three main efforts I would like to discuss.

First, there are some changes that we can make administratively. Our Division 29 rules are related to enforcement and penalties when radioactive materials are disposed in Oregon.

Among other things, these rules establish criteria that must be met before our agency or the Energy Facility Siting Council can issue civil penalties. They also set a monetary schedule for penalties, which currently applies equally to both our radioactive waste rules and the rules governing energy facilities. Finally, they describe the process and requirements for corrective action when a violation occurs. This most recent episode is the first time we have had to test these rules and issue a notice of violation for radioactive waste disposal, and as such we have identified some areas that deserve a hard look.

On May 21st, we received approval from the Energy Facility Siting Council, who oversees these rules, to form a Rulemaking Advisory Committee that will evaluate Division 29 and recommend any necessary revisions. We intend for this group to include representatives from a range of interests and expertise that may include regulated entities such as landfills and waste generators, public and environmental groups, local government, university technical experts, DEQ, tribes, and the public at large. We hope to kick off the committee this month and complete the rulemaking process by November of this year.

The second effort relates to enhancing our enforcement and investigation authorities beyond those that are clearly delineated in Division 29 and which were part of the amendment to

HB 4014 introduced by Senator Dembrow during the 2020 legislative session. Specifically, areas that we have identified needing enhancements include:

- better defined investigative powers to pursue potential violations;
- clarified authority to require corrective action in the event of unlawful disposal, especially in cases where there is not imminent danger but where there may be future threat if wastes are not addressed; and
- clarified authority to require preventative measures such as reporting processes, monitoring equipment, or other such systems.

We understand that the Committee may pursue legislation to address these changes during the next session, and it is our hope that this effort will be informed and honed by the deliberations of the Rulemaking Advisory Committee this summer and fall. The overall outcome of this process would be a revamped and enhanced enforcement and outreach program to prevent the disposal of radioactive waste in Oregon.

The third and final effort was also included in Senator Dembrow's amendment and it relates to how we as a state define "radioactive waste" that is subject to the statutory prohibition. As we discussed with you back in February, the statute defining radioactive waste cites specific Division 50 rules and specifies that they may only be revised to add radioisotopes not previously considered.

This citation and restriction prevent ODOE or EFSC from initiating broader rulemaking regarding what qualifies for exemption from the term "radioactive waste." Much has changed since the Division 50 rules were originally promulgated in 1981 and Oregon's existing standards may need to be strengthened should the state not wish to become an attractive disposal option for new or previously unconsidered types of TENORM waste as a result of outdated standards. ODOE wants to ensure that the definition of "radioactive waste" is fitting to the present waste landscape, based on the best available science, and consistent with the standards currently being established in other states.

Our hope is that this can also be addressed by the Committee in the 2021 session.

Thank you again for this opportunity to provide an update to the Committee.