



Oregon

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TESTIMONY

To: Senate Interim Committee on the Environment and Natural Resources

From: Jeff Burrigh, Radioactive Waste Remediation Specialist

Date: December 4, 2020

Re: Committee Legislative Concept on Radioactive Waste

Good morning Chair Golden, members of the Committee.

For the record, I am Jeff Burrigh, radioactive waste remediation specialist within the nuclear safety division at the Oregon Department of Energy. I am here today to discuss a legislative concept before this committee focused on preventing the disposal of radioactive waste within the state.

As you may recall, last year our agency discovered, based on a citizen tip, that the Chemical Waste Management of the Northwest landfill near Arlington 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. Our agency determined that this disposal violated the state's prohibition against the disposal of radioactive waste in the state, and we issued a Notice of Violation to the landfill operator, Waste Management, on February 20th.

Back in September we provided this committee an update of our work to resolve the situation at Arlington and ensure that corrective actions to be conducted by the landfill will be protective of public health and the environment and prevent this from happening again. Since that time, our agency conducted two public meetings – an online webinar and an in person public meeting at the Arlington High School football field, to explain the results of the risk assessment and corrective action plan developed by the landfill company, to answer questions, and to solicit public comment. Our public comment period formally closed on November 8th, and we are currently reviewing the comments received. The next and final step will be to respond to

comments and issue our final determination regarding the acceptability of the landfill's proposed corrective actions.

Today I would like to provide details on our ongoing rulemaking efforts, as well as ways in which this Committee can strengthen the state's laws and the Department's authority when it comes to preventing the disposal of radioactive waste in Oregon.

As a result of the situation in Arlington, our agency has looked for opportunities to improve our prevention and enforcement program. This has involved a close look at our existing program, rules, and legislative authority.

First, we have undertaken a rulemaking related to ODOE's authority to enforce the prohibition against the disposal of radioactive waste, including the ability to assess appropriate penalties when radioactive materials are disposed in Oregon. The rules we are proposing to amend establish criteria that must be met before our agency or the Energy Facility Siting Council can issue civil penalties, set a monetary schedule for penalties, and describe the process and requirements for corrective action when a violation occurs. Our rulemaking advisory committee has met three times since July and are holding a public hearing this evening to unveil the results of our work, to answer questions from the public, and to gather feedback. Next, we will provide our recommended updates to the Energy Facility Siting Council for their consideration via a public process. Overall, it is our expectation that any updates to the rules will strengthen the deterrence capabilities of our enforcement authority while also incentivizing corrective action.

As we have indicated to the Committee previously, while the Department can take some actions administratively, we see the need for changes to the state's statutes in this area, which were written in the late 1970s before this type of waste stream became prevalent.

In February during the short legislative session, then-Chair Dembrow introduced an amendment to a bill to strengthen our enforcement and investigation authorities. The session ended before this legislation passed, but the committee has indicated an interest in continuing to pursue these statutory changes. There is a draft committee legislative concept in OLIS.

Specifically, LC 2048 includes:

- clarification that the disposal of radioactive waste is prohibited anywhere in Oregon, and that such prohibition applies not only to a disposer but to anyone who arranges for such disposal;
- 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;
- clarified authority to require preventative measures such as reporting processes, monitoring equipment, or other such systems;

- authority to recoup some costs to the agency when a Notice of Violation occurs; and
- authority for the agency to update and clarify, through a future rulemaking, what qualifies for an exemption from the term “radioactive waste.”

As we discussed with you back in February and again in September, the statute defining radioactive waste cites specific administrative 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.”

That’s important because much has changed since the current rules were originally promulgated in 1981. In recent years, several states have passed new restrictions on the disposal of the type of waste that was disposed of at Arlington.

The state has the opportunity to strengthen and clarify our standards to ensure that Oregon does not become an attractive disposal option for new or previously unconsidered types of TENORM waste. ODOE wants to ensure that statute and rules are fitting to the present waste landscape, based on the best available science, and consistent with the standards currently being established in other states.