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On September 11, 2019, the Oregon Department of Energy was made aware by a North Dakota citizen that potentially radioactive wastes were possibly being disposed in Oregon. We immediately contacted the Chemical Waste Management of the Northwest facility near Arlington, in Northeast Oregon. The citizen had given us the name of a waste broker company that was not sending waste directly to Arlington. After further investigation, we determined that a waste hauling company that contracts with waste brokers, Oilfield Waste Logistics, had sent the waste to Arlington.

When we learned of this waste, the Department of Energy had two initial priorities: put a stop to the waste being imported and ensure the public was not at risk.

Chemical Waste Management provided us laboratory data related to this waste, which allowed us to very quickly determine that the characteristics of this waste met our definition of radioactive material, which is prohibited from disposal in the state. Although there is a process for a case-specific, hazard-based determination of whether certain waste streams can be disposed in Oregon, neither company went through that process. Therefore, we determined that the waste exceeded the state's standards.

After ODOE notified Chemical Waste Management that the waste exceeded the state's standards, the landfill operator immediately suspended any further waste of that type from coming to Oregon.

The second priority was to ensure the public was not at risk. Based on the data we received from Chemical Waste Management and from the State of North Dakota – which tracks these shipments out of their state – and consultation with Oregon Health Authority's Radiation Protection Services, our assessment was that the waste in its current location poses no immediate threat to workers, the public, or the environment. We also concluded no workers were put at significant risk during the original transportation and disposal of the waste and no laws regarding transportation were violated.

With those priorities met, we then had an opportunity to take a deliberative approach to fully research this issue and the extent of our authority and the authority of other agencies as well.

We've never had a situation like this, and we needed to fully understand our rules and authorities. We consulted with other state agencies that have some related authorities – such as the Department of Environmental Quality and Oregon Health Authority's Radiation Protection Services, and we wanted to learn from other states' experiences of similar incidents.

Due to the unprecedented nature of this situation, it was important also for us to ensure the public had as complete a picture of the situation as possible, including the next steps that Chemical Waste Management and the state will take to prevent this from happening in the future.

On February 13, we issued a Notice of Violation to Chemical Waste Management. We found that the company failed to do its due diligence by incorrectly analyzing the waste against Oregon's criteria for the definition of "radioactive material" before it was disposed.

Oregon has a prohibition on the disposal of radioactive waste within the state, which was established back in the late 1970s. But, because everything has a small amount of radioactivity, we had to define a threshold for what is and what is not radioactive in terms of whether it can be disposed in Oregon. Our Administrative Rules do that, but they are admittedly complex. Additionally, our rules are structured in such a way that if a landfill or other entity believes they have met a concentration-based exemption, there is not a strict requirement to check that judgment with our agency (although we make ourselves available for this purpose and do field calls each year with questions about our rules).

Radioactivity occurs naturally in the environment, which can be concentrated during human activity, like commercial/industry purposes, including fracking for oil and natural gas. Waste from those processes is what is known as TENORM – Technologically Enhanced Naturally Occurring Materials. This is the type of waste that was disposed in the CWM landfill – 1,284 tons – about two and a half million pounds – over a three-year period beginning in 2016.

We have been working with Chemical Waste Management to better understand the details of the situation. Chemical Waste Management has begun working on a detailed Risk Assessment to evaluate potential past, present, and future risk associated with the disposal. A Corrective Action Plan will help inform the best decision for the waste that is already buried and explain the processes the company will put in place to prevent re-occurrence. These documents should be submitted by late Spring.

Based on its analysis of these documents, the agency will accept or propose amendments to these documents and there will be an opportunity for the public to review and comment on the documents.

The Gilliam County Court is hosting two separate informational meetings that we will participate in on March 4, 2020.

We are continuing our investigation. Our current Notice of Violation is for a Class I violation, without penalty, as it was our initial determination that Chemical Waste Management did not meet any of the criteria in the existing rules to subject them to civil penalties. Should we find additional information that contradicts these findings, then we have the ability to amend the Notice of Violation and include penalties. If something like this were to happen again at this facility, we would be able to jump straight to a Class II violation which carries penalties.

In the course of investigating this event and issuing a Notice of Violation, ODOE identified opportunities to improve our existing enforcement program, corrective action authority, and civil penalty rules. We believe there is a need to clarify and strengthen ODOE's authority to enforce the prohibition against the disposal of radioactive waste, including the ability to investigate potential violations more thoroughly, direct corrective action, or direct preventative measures such as additional monitoring infrastructure and activities. Some of this can be accomplished through rulemaking, which we will be undertaking this summer, but some changes will need to be made to the state's statutes in this area, which were written in the late 1970s before this type of waste stream became prevalent. For example, we believe it would be helpful to clarify, strengthen and update the standard for defining radioactive waste and strengthen the penalty structure for future violations. We look forward to continued discussions with interested parties during our rulemaking process this summer.

In addition, fracking waste has become a major issue throughout many parts of the United States. In recent years, several states have passed new restrictions on the disposal of this waste, and Oregon's existing standards may need to be strengthened should the state not wish to accept this type of waste.