From:	Phil Rutherford
To:	"Doug Hansen"; "Alyssa Stringham"; dwmrcsubmit@utah.gov
Cc:	"Stevie Norcross"; "Arlene Lovato"; "Jordan Kerns"; "Kim Shelley"; "Jalynn Knudsen"; "Otis Willoughby III"; bfrandall@agutah.gov; lkellum@utah.gov
Subject:	Complaint and Records Request related to ETEC Waste Shipments
Date:	Saturday, February 17, 2024 7:00:31 PM

Dear WMRC Management,

This email responds to two communications addressed to me, both dated February 16, 2024. Both related to my February 9, 2023, complaint (DRC-2023-001509).

- Letter DRC-2024-004475 from Douglas Hansen, denying my appeal (DRC-2024-4433).
- Email from Alyssa Stringham responding to my February 9, 2024, GRAMA records request.

Firstly, let me express my appreciation of the prompt response to both the second GRAMA records request and the review of my appeal. Your response to my first GRAMA records request of May 20, 2023, was also timely though it is unfortunate that it ended up in my spam folder, so I was not aware of its existence until this month.

Response to Douglas Hansen's Letter (DRC-2024-004475)

The first two pages detail why my February 9, 2024, appeal was not timely. I do not disagree with that, though of course I was unaware of any 30-day appeal requirement. It is not obvious to me whether your response would have been materially different from the balance of your letter on page 3, had my appeal been timely.

Page 3 started,

> *"Further, without waiving the conclusion that your appeal is untimely, I would like to address the merits of your allegation. The Division's allegation program is limited to investigation of matters within the scope of Utah's Agreement State Program. The basis upon which a generator may classify a given waste shipment as qualifying as Class A waste under the Division's rules is outside the scope of the Division's program, much less when that generator's actions occur in another state. EnergySolutions' waste acceptance criteria are stated in terms of maximum activity. There is no minimum activity for Class A waste. Classification determinations are made by the generator. So long as manifested Class A waste received by EnergySolutions does not exceed the maximum concentration, EnergySolutions may receive and dispose of it at its Clive facility."*

The phrase *"address the merits of your allegation"* raised my hopes that perhaps WMRC was

finally about to address the specifics of my allegation. Alas, it was not to be.

The phrase, "*The basis upon which a generator may classify a given waste shipment as qualifying as Class A waste under the Division's rules is outside the scope of the Division's program, much less when that generator's actions occur in another state"* appeared strange. It translates into … the Division does not care how a generator classifies its waste, or whether that classification is correct, or whether the manifested data on NRC Forms 540/541 is correct … this is even more true if the generator is in another state. Please dispute if my rewording of your position is incorrect. I assume that the logic behind the last statement is that the out-of-state generator is not licensed by the state of Utah … however, Utah requires all generators to submit a permit request and abide by the rules of that permit (R313-26). Therefore, Utah should care about the generators' classification credibility.

WMRC correctly states, "*There is no minimum activity for Class A waste."* It is an unfortunate fact that neither the Low-level Radioactive Waste Policy Amendments Act of 1985, nor flow-down federal or agreement state LLRW regulations define a lower concentration or activity limits for Class A LLRW. EPA recognized this when it held "low-activity radioactive waste" rulemaking hearings in 2003. Unfortunately, nothing came of those hearings and EPA also failed to establish a lower limit. This was pointed out in Boeing's comments (https://www.regulations.gov/comment/EPA-HQ-OAR-2003-0095-0436). There are plenty of BRC-type regulations and guidance, including NRC's exempt quantities, exempt concentrations, unimportant quantities of source material, air and water effluent limits, EPA's radionuclide NESHAPs limits, NRC, DOE, and ANSI/HPS clearance limits for surface contamination, EPA PRGs, etc. However, Class A radioactive waste has no lower limit.

WMRC states, *"Classification determinations are made by the generator. So long as manifested Class A waste received by EnergySolutions does not exceed the maximum concentration, EnergySolutions may receive and dispose of it at its Clive facility."* This implies that any waste including conventional, uncontaminated building demolition debris or household trash could go to Energy*Solutions,* as long as a generator was prepared to pay the disposal fees. Furthermore, WMRC would not care because *"Class A maximum concentration limits were not exceeded."* This is clearly not the intended mission of Energy*Solutions*, nor should it be condoned by WMRC. Both should be cognizant, and concerned about exceeding Clive's capacity, for the SWLLRWC.

Losing all hope of the specifics of my allegations to be addressed, I read further.

> *"It is likewise not surprising that the Division's investigation into your allegations did not result in the creation of new records, such as an inspection report. According to the inspector, all conversations happened in person and the inspector did not create an inspection report. Rather, findings were reported verbally as the matters addressed in*

your allegation are and were outside the scope of any Division rule or inspection module. The inspector confirmed that the shipments in question did not exceed the maximum concentration limits for Class A waste."

The original complaint to DOE was an 18-page letter with countless online links to original waste profiles, 540/541 manifests, and detailed analysis of how radionuclide activities and concentrations were false and inconsistent (https://philrutherford.com/SSFL/doe_building_demolition/FOIA/Response_to_FOIA_Data_Package_Revised.pdf). The original complaint to WMRC summarized the allegations and provided online links to all the supporting analysis, including the DOE complaint (https://philrutherford.com/SSFL/doe_building_demolition/FOIA/UDWMRC_Letter_2023-02-09.pdf).
My question is this. How is an honest review and investigation of all that voluminous material done by, "*… all conversations happened in person and the inspector did not create an inspection report. Findings were reported verbally …"*

Nothing in my complaint implied or alleged that the subject waste exceeded the Class A maximum concentration limits, therefore what relevance is the conclusion, "*The inspector confirmed that the shipments in question did not exceed the maximum concentration limits for Class A waste."* Is that the only thing the WMRC cares about?

It appears that neither WMRC management, nor the investigation "inspector", nor those to which he spoke have even read, much less understood, the above two cited documents. Nothing in the various communications from WMRC has directly addressed the specifics of the allegations, other than your statement, "*the matters addressed in your allegation are and were outside the scope of any Division rule or inspection module."*

I do not understand how WMRC can turn a blind eye to allegations of widespread, blatant falsification of NRC 540/541 manifest data raised in the complaint. WMRC does not even attempt dispute the allegations. It ignores them.

I recall a Notice of Violation (NOV) that was served on The Boeing Company by your Division on June 8, 2010, for waste shipment 9082-02-0001, arriving at Energy*Solutions* on May 27, 2010 (https://philrutherford.com/SSFL/doe_building_demolition/FOIA/SHEA-110070.pdf). The NOV can best be described as a minor clerical error, involving putting the UN ID number (UN2910) in the wrong NRC Form 540 box and assigning the wrong container description ID in NRC Form 541. A response to the NOV was provided to your Division by myself, who was a member of Boeing management at the time (https://philrutherford.com/SSFL/doe_building_demolition/FOIA/SHEA-110137.pdf). Clearly, WMRC conducted more rigorous reviews of NRC manifests, even absent a complaint, in 2010 than it does in 2020-2024. Please explain this difference WMRC oversight.

Director Hansen, your letter closes with an invitation to appeal the State Records Committee. I see little point in that since I think we all understand that no records exist for what was essentially a non-existent investigation. Your inspector did not investigate the allegations … period. The State Records Committee would only be useful if you were withholding records in violation of State law … and you are not.

Notice of Appeal

Director Hansen, I am respectfully asking that you re-assess the basis for ignoring a valid, well documented complaint, and re-open the investigation. You know it is the right thing to do.

Response to Alyssa Stringham's email of February 16, 2024

Again, thank you for your prompt response. However, as you indicated, no meaningful additional records of the extended investigation period following my May 23, 2023, telephone conversation with Mr. Willoughby and Mr. Kellum were generated, other than correspondence already in my possession.

Since it is obvious that no meaningful investigation of my allegations has been conducted or documented (see above), it would be pointless to submit a second Notice of Appeal to the Chief Administrative Officer of the Division following your partial denial of my second GRAMA Records Request. I am instead appealing to the Chief Administrative Officer for the investigation to be re-opened (see above).

Sincerely,

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