



State of Utah

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Department of  
Environmental Quality

Kimberly D. Shelley  
*Executive Director*

DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL

Douglas J. Hansen  
*Director*

February 16, 2024

Phil Rutherford  
Phil Rutherford *Consulting*  
8655 Delmonico Avenue  
West Hills, CA 91304

RE: Response to Appeal Regarding GRAMA Request Dated May 20, 2023

Dear Mr. Rutherford:

I am responding to your Government Records Access and Management Act (GRAMA) appeal, received via email on February 9, 2024, regarding your GRAMA request dated May 20, 2023. I have reviewed the appeal and the underlying matter, and I am providing the following decision.

**Background**

On Saturday May 20, 2023, you submitted a GRAMA request to the Division of Waste Management and Radiation Control (Division) via the Open Records Portal. This request was received on the following business day, Monday May 22, 2023. The Division's response to the request was due on June 6, 2023.

Your GRAMA request was stated as follows:

“Documentation of DWMRC investigation resulting from my February 9, 2023 letter (DRC-2023-001509). Please provide letters, emails, reports, records of interviews and presentations, internally within DWMRC and externally with EnergySolutions, Department of Energy, North Wind, California DTSC and the Nuclear Regulatory Commission.”

By email dated June 6, 2023, addressed to the email address provided in the GRAMA request ([email@philrutherford.com](mailto:email@philrutherford.com)), the Division's GRAMA Records Officer provided a response, together with the following referenced records:

DRC-2023-001509 - GSA Phil Rutherford Consulting Energy Tech Engineering, Irregularities in Shipments of Waste from the former Energy Technology Engineering Center  
DRC-2023-004115 - Division Response to P Rutherford's Letter\_\_050823  
Fwd\_ Irregularities in DOE's Waste Shipments from ETEC to EnergySolutions  
Fwd\_ Radioactive Waste Allegation

DRC-2024-004475

195 North 1950 West • Salt Lake City, UT  
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(Over)

The June 6, 2023, correspondence from the Division stated that the transmission was considered to be the final decision concerning your request, together with the following information:

Insofar as you consider any part of this response a denial of your request, you may appeal to the following Chief Administrative Officer for the Division:

Douglas J. Hansen, Director  
 Utah Department of Environmental Quality  
 Division of Waste Management and Radiation Control  
 P.O. Box 144880  
 Salt Lake City, UT 84114-4880

To appeal, you must file a Notice of Appeal with the Chief Administrative Officer within 30 days of the date of this email. Your Notice of Appeal must contain your name, your mailing address, your daytime telephone number, and a statement of the relief you seek. With your Notice of Appeal, you may also file a short statement of facts, reasons, and legal authority in support of your appeal. Appeals must be submitted in writing to the Division by mail or by email to [dwmrcsubmit@utah.gov](mailto:dwmrcsubmit@utah.gov).

The appeal of the Division's response to your GRAMA request was due on or before Monday, July 6, 2023. You indicated that the Division's response went to your spam folder so you never received it. In this case, the Division's failure to get a response to you by June 6, 2023, resulted in a denial by operation of law pursuant to GRAMA, Utah Code Section 63G-2-204(9) (providing that the agency's failure to respond within 10 days of a GRAMA request is deemed to be a denial). Your appeal to this denial was still due on or before July 6, 2023. On February 9, 2024, you sent an email to our GRAMA Records Officer at [wmrcgrama@utah.gov](mailto:wmrcgrama@utah.gov) stating, in part, "Please consider this email as a Notice of Appeal." You failed to file a timely appeal.

### Analysis

GRAMA provides in part as follows:

**63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal.**

(1)(a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

- (i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or
- (ii) *the record request is considered denied under Subsection 63G-2-204(9), if that subsection applies.*

Utah Code § 63G-20401(1)(a) (emphasis added). Under either element of the code, your appeal dated February 9, 2024, is not timely, and the Division has no jurisdiction to entertain it. To the extent that the Division's June 6, 2023 email could be considered a denial, your appeal was due on or before July 6, 2023. If you did not receive the response (or hypothetically, if the Division had failed to respond), your appeal was likewise due on or before July 6, 2023. The fact that the Division's June 6, 2023 email may have been captured by your email system's junk folder is misplaced.

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.

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.

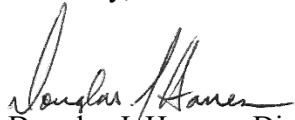
Accordingly, your appeal is respectfully denied.

Under Utah Code § 63G-2-402, you have the right to immediately appeal this decision to the State Records Committee under Utah Code § 63G-2-403, or to file a petition for judicial review in district court under Utah Code § 63G-2-404. Any appeal must be brought within 30 days of the date of this decision. An appeal to the State Records Committee should be addressed to:

Rebekkah Shaw  
Executive Secretary of the State Records Committee  
346 South Rio Grande  
Salt Lake City, UT 84101-1106  
Phone: 801-531-3851  
E-mail: [SRCsecretary@utah.gov](mailto:SRCsecretary@utah.gov)

If you have any questions regarding this appeal denial, please call Stevie Norcross at 385-499-0511.

Sincerely,



Douglas J. Hansen, Director  
Division of Waste Management and Radiation Control

DJH/SN/jk

- c: Kimberly D. Shelley, Executive Director, Utah Department of Environmental Quality (UDEQ)  
Stevie Norcross, PhD, Assistant Director,  
Division of Waste Management and Radiation Control, UDEQ  
Jalynn Knudsen, Assistant Director, Division of Waste Management and Radiation Control, UDEQ  
Otis Willoughby, Low Level Radioactive Waste Section Manager,  
Division of Waste Management and Radiation Control, UDEQ  
Alyssa Stringham, GRAMA Records Officer,  
Division of Waste Management and Radiation Control, UDEQ  
Bret F. Randall, Assistant Attorney General, Utah Attorney General's Office  
Phil Rutherford, Phil Rutherford *Consulting* (Email and Hard Copy)