

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-200. Underground Storage Tanks: Definitions.**

**R311-200-1. Definitions.**

- (a) Refer to Section 19-6-402 for definitions not found in this rule.
- (b) For purposes of underground storage tank rules:
  - (1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.
  - (2) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".
  - (3) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.
  - (4) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.
  - (5) "Certificate" means a document that evidences certification.
  - (6) "Certification" means approval by the Director or the Board to engage in the activity applied for by the individual.
  - (7) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).
  - (8) "Change-in-service" means the continued use of an UST to store a non-regulated substance.
  - (9) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.
  - (10) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.
  - (11) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).
  - (12) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.
  - (13) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Director following the criteria in R311-211.
  - (14) "Department" means the Utah Department of Environmental Quality.
  - (15) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).
  - (16) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.
  - (17) "EPA" means the United States Environmental Protection Agency.
  - (18) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Director.
  - (19) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.
  - (20) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.
  - (21) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.
  - (22) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(23) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

(24) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Director.

(25) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(26) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(27) "No Further Action determination" means that the Director has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(28) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(29) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(30) "Owners and operators" means either an owner or operator, or both owner and operator.

(31) "Over-excavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(32) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Rule R311-202.

(33) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(34) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(35) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(36) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(37) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(38) "Registration fee" means underground storage tank registration fee.

(39) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(40) "Secondary Containment", for the purposes of R311-203-6, means a release prevention and detection

system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(41) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(42) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(43) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(44) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(45) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Director.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Director.

(46) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(47) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(48) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(49) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

(50) "Under-Dispenser Containment", for the purposes of R311-203-6, means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(51) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(52) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(53) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(54) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(55) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(56) "UST installer" means an individual who engages in underground storage tank installation.

(57) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(58) "UST remover" means an individual who engages in underground storage tank removal.

(59) "UST tester" means an individual who engages in UST testing.

(60)(A) "UST testing" means

(i) a testing method which can detect leaks in an underground storage tank system, or

(ii) testing for compliance with corrosion protection requirements, or

(iii) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components.

(B) Testing methods must meet applicable performance standards:

(i) 40 CFR 280.40(a)(4), 280.43(c), and 280.44(b) for tank and product piping tightness testing,

(ii) 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping,

(iii) 280.31(b) for cathodic protection testing,

(iv) 280.35(a)(2) for overfill device inspection,

(v) 280.40(a)(3) for testing of mechanical and electronic release detection components, and

(vi) R311-206-11(c)(2)(C) for tank and piping secondary containment testing under R311-206-11.

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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.**

**R311-201-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-201-2. Certification Requirement.**

(a) Certified UST Consultant. No person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Director shall contain the Certified UST Consultant's signature. Any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Director.

(b) UST Inspector. No person shall conduct underground storage tank inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct these activities.

(c) UST tester.

(1) Except as outlined in Subsections (c)(2) and (c)(3), no person shall conduct UST testing without having certification to conduct such activities. Except as outlined in Subsection (c)(2) and (c)(3), no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201.

(2) An individual certified under Rule R311-201 as an installer may:

(A) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of

pipng, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;

(B) perform an overfill device inspection to meet the requirements of 40 CFR 280.35(a)(2);

(C) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i),(ii), (iv), and (v); and

(D) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11(e)(2), if no equipment that requires training by the manufacturer is used.

(3) An UST owner or operator may:

(A) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used, and

(B) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11(e)(2), if no equipment that requires training by the manufacturer is used.

(4) Certification by the Director under this Rule shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by training determined by the Director to be equivalent to the manufacturer training, for these types of testing:

(A) tank, line, and leak detector testing;

(B) interstitial tests of tanks and piping; and

(C) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.

(5) The Director may issue a limited certification restricting the type of UST testing the applicant can perform.

(d) Groundwater and soil sampler. No person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. No owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. No person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. No owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Director may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. No person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. No owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

### **R311-201-3. Application for Certification.**

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Director to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in Section R311-201-4 and

(2) will maintain the applicable performance standards specified in Section R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Director for determination of eligibility for certification. If the Director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-4 and meets the standards described in Section R311-201-6, the Director shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Section R311-201-5.

**R311-201-4. Eligibility for Certification.**

## (a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Director to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Director.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Director;

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Director; or

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Director.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1).

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

## (b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

## (c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification

application.

(2) Training.

(A) For initial certification, an applicant shall complete underground storage tank testers training within the six month period prior to application, in a program approved by the Director to provide training to include applicable and related areas of state and federal statutes, rules, and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(B) For initial certification to perform the types of testing specified in R311-201-2(c)(3), an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate.

(C) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets the performance standards specified in R311-200-1(b)(60)(B). This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Director. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Director. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director, and shall include instruction in the following areas: tank installation, pre-

installation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director and shall include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

**R311-201-5. Renewal.**

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(1) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6;

(2) paying any applicable fees, and

(3) passing a certification renewal examination.

(b) If the Director determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Director shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

**R311-201-6. Standards of Performance.**

(a) Individuals who are certified in accordance with Rule R311-201 shall:

(1) display the certificate upon request;

(2) comply with all local, state, and federal laws, rules, and regulations regarding the UST activity for which certification is granted;

(3) report the discovery of any release caused by or encountered in the course of performing the UST activity for which certification is granted to the Director, the local health district, and the local public safety office within twenty-four hours. Certified UST consultants and certified groundwater and soil samplers shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah UST rules, or report the results indicating that a release may have occurred, to the Director, the local health district, and the local public safety office within twenty-four hours.

(4) not participate in fraudulent, unethical, deceitful, or dishonest activity with respect to a certificate application or performance of work for which certification is granted; and

(5) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(b) Certified individuals shall, in addition to meeting the performance standards in R311-201-6(a), observe the following:

(1) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:

(A) shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(B) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(C) shall perform work and submit documentation in a timely manner;

(D) shall review and certify by signature any documentation submitted to the Director in accordance with UST release-related compliance; and

(E) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;

(2) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

(A) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Director.

(3) UST Tester. An individual who performs UST testing in the State of Utah:

(A) shall perform all work in a manner that there is no release of the contents of the tank;

(B) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person; and

(C) shall perform work in a manner that the integrity of the underground storage tank system is maintained.

(4) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

(A) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment, including pre-installation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair, shall be supervised by a certified person; and

(B) shall notify the Director as required by R311-203-3(a) before installing or upgrading an UST.

(5) UST Remover. An individual who performs underground storage tank removal in the State of Utah:

(A) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person; and

(B) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b).

### **R311-201-7. Denial of Certification and Appeal of Denial.**

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Director specifying the reason or reasons for denial. An applicant may appeal the determination using the procedures specified in Section 19-1-301.5, et seq., and Rule R305-7.

**R311-201-8. Inactivation of Certification.**

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer be certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

**R311-201-9. Revocation of Certification.**

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked. Procedures for revocation are specified in Rule R305-7.

**R311-201-10. Reciprocity.**

If the Director determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-3(c), as appropriate, whichever is first.

**R311-201-12. UST Operator Training and Registration.**

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Director to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) New Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(d)(2). The Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

(A) have a general knowledge of UST systems;

(B) ensure that UST records are properly maintained according to 40 CFR 280;

(C) ensure that yearly UST fees are paid;

(D) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(E) make financial responsibility documents available to the Director as required; and

(F) ensure that Class B and Class C operators are trained and registered.

(2) An owner or operator may designate a third-party Class B operator as a Class A operator if:

(A) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(B) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(C) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Section R311-203-7;

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) Any individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(h) and shall:

(1) be certified in accordance with Rule R311-201 as:

(A) a UST Tester, or

(B) a UST installer as either a general installer or service/repair technician, or

(2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Director, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Director. The Director shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(h)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Director, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Director. The Director shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Director, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list

identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or become inactive if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(i).

(B) If the Director determines that the operator meets all the requirements for registration, the Director shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(h)(1) before receiving the renewal registration.

(i) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility; or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Section R311-203-7; or

(C) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Director.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Director within 30 days of the re-training. If the documentation is not received by the Director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(h)(1) and (2).

(5) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(i)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(i)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(j) Reciprocity.

(1) If the Director determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(h)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(h)(2)(D).

**KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures**

**Date of Enactment or Last Substantive Amendment: January 1, 2017**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-202. Federal Underground Storage Tank Regulations.**

**R311-202-1. Incorporation by Reference.**

This rule incorporates by reference 40 CFR Part 280, the federal underground storage tank regulations, in effect as of October 13, 2015, except that:

(a) 40 CFR 280 Subpart J is not incorporated by reference;

(b) the definitions of Class A operator, Class B operator, Class C operator, and Training program in 40 CFR 280.12 are not incorporated by reference;

(c) The date October 13, 2015 in 280.10(a)(1)(ii), 280.10(a)(1)(iii), 280.20(c)(3), 280.35(b)(1), 280.35(b)(2), 280.42(a) note, 280.42(e), 280.45(a), 280.251(a)(1), 280.251(a)(2), 280.251(b), 280.252(b), 280.252(e), 40 CFR Part 280 appendix 1, and 40 CFR Part 280 appendix 2 is, in each instance, changed to January 1, 2017; and

(d) The date April 11, 2016 in 280.20, 280.20(f), 280.41(a)(1), 280.41(a)(2), 280.41(b)(1), and 280.41(b)(2) is, in each instance, changed to January 1, 2017.

**KEY: hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: January 1, 2017**

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**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-203. Underground Storage Tanks: Technical Standards.**

**R311-203-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-203-2. Notification.**

(a) The owner or operator of an underground storage tank shall notify the Director whenever:

(1) new USTs are brought into use;

(2) the owner or operator changes;

(3) changes are made to the tank or piping system; and

(4) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed or upgraded.

(b) All notifications shall be submitted on the current approved notification form.

(c) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.

(d) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Director within 60 days of the completion of the installation.

**R311-203-3. New Installations, Permits.**

(a) Certified UST installers shall notify the Director at least 10 days, or another time period approved by the Director, before commencing any of the following activities:

- (1) the installation of a full UST system or tank only;
- (2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
- (3) the internal lining of a previously-existing tank;
- (4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
- (5) the installation of a bladder in a tank;
- (6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
- (7) the installation of a spill prevention or overflow prevention device;
- (8) the installation of a leak detection monitoring system; and
- (9) the installation of a containment sump or under-dispenser containment.

(b) The UST installation company shall submit to the Director an UST installation permit fee of \$200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(d), an installation shall be considered complete when:

(1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Director of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Director an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(2).

#### **R311-203-4. Underground Storage Tank Registration Fee.**

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) The Director shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

- (1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,
- (2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes

the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

(g) When the Director is notified of the existence of a previously un-registered regulated UST, the Director shall assess the registration fee for the current fiscal year. If the UST is properly permanently closed within 90 days of the notification of the existence of the UST, the Director may decline active collection of past-due registration fees, late payment penalties, and interest for previous fiscal years.

### **R311-203-5. UST Testing Requirements.**

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(b) Spill prevention equipment. An individual who conducts a test of spill prevention equipment to meet the requirements of 40 CFR 280.35(a)(1)(ii) shall report the test results using:

(1) the form "Utah Spill Prevention Test", or

(2) the form "Appendix C-3 Spill Bucket Integrity Testing Hydrostatic Test Method Single and Double-Walled Vacuum Test Method", found in PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities", or

(3) another form approved by the Director.

(c) Containment sump testing. An individual who conducts a test of a containment sump used for interstitial monitoring to meet the requirements of 40 CFR 280.35(a)(1)(ii) or a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11 shall report the test results using:

(1) the form "Utah Containment Sump Test", or

(2) the form "Appendix C-4 Containment Sump Integrity Testing Hydrostatic Testing Method", found in PEI RP1200, or

(3) another form approved by the Director.

(d) When a sump sensor is used as an automatic line leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Director. The sensor shall be located as close as is practicable to the lowest portion of the sump.

(e) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the Director. The tester who performs the test shall provide the following information: location of at least three test points per tank, location of one remote test point for galvanic systems, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(f) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

### **R311-203-6. Secondary Containment and Under-Dispenser Containment.**

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 and before January 1, 2017 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the

requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

- (A) at the submersible pump or other location where the piping connects to the tank;
- (B) where the piping connects to a dispenser, or otherwise goes above-ground; and
- (C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

(A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

- (A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or
- (B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

- (A) be liquid-tight on its sides, bottom, and at all penetrations;
- (B) be compatible with the substance conveyed by the piping; and
- (C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Director documentation to show that the requirements of Subsections (a) and (b) do not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

(B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

(1) the closest part of the nearest community water system, including:

- (A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;
- (B) water lines, processing tanks, and water storage tanks; and
- (C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b) apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(f) To meet the requirements of 40 CFR 280.20, all tanks and product piping that are installed or replaced as part of an underground storage tank system on or after January 1, 2017 shall be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

**R311-203-7. Operator Inspections.**

(a) Owners and operators shall perform periodic inspections in accordance with 40 CFR 280.36. Inspections shall be conducted by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.

(b) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or (a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the Director.

(c) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an annual operator inspection.

(d) An owner or operator who conducts visual checks of tank top containment sumps and under dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR 280.43(g) shall conduct the visual checks monthly and report the results on the operator inspection form.

**R311-203-8. Unattended Facilities.**

(a) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

**KEY: fees, hazardous substances, petroleum, underground storage tanks**

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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-204. Underground Storage Tanks: Closure and Remediation.**

**R311-204-1. Definitions.**

Definitions are found in Section R311-200.

**R311-204-2. Underground Storage Tank Closure Plan.**

(a) Owners or operators of all underground storage tanks or any portion thereof which are to be permanently closed or undergo change-in-service shall submit a permanent closure plan to the Director. The permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with 40 CFR 280 Subpart G.

(b) If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is not required to submit a closure plan, but must meet the requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(c) The closure plan shall address applicable issues involved with permanent closure or change-in-service, including: tank disposal handling and final disposal site, product removal, sludge disposal, vapor purging or inerting, removing or securing and capping product piping, removing vent lines or securing vent lines open, tank cleaning, environmental sampling, contaminated soil and water management, in-place tank disposal or tank removal,

transportation of tank, permanent disposal and other disposal activities which may affect human health, human safety or the environment.

(d) No underground storage tank shall be permanently closed or undergo change-in-service prior to the owner or operator receiving final approval of the submitted permanent tank closure plan by the Director, except as outlined in Subsection R311-204-2(b). Closure plan approval shall be effective for a period of one year. If the underground storage tank has not been permanently closed or undergone change in service as proposed within one year following approval from the Director, the plan must be re-submitted for approval, unless otherwise approved by the Director.

(e) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the Director.

(f) The owner or operator shall ensure that the approved permanent closure plan and approval letter are on site during all closure activities.

(g) Any deviation from or modification to an approved closure plan must be approved by the Director prior to implementation, and must be submitted in writing to the Director.

(h) The Director shall be notified at least 72 hours prior to the start of closure activities.

### **R311-204-3. Disposal.**

(a) Tank labeling. Immediately after being removed, all tanks which are permanently closed by removal must be labeled with the following in letters at least two inches high:

- (1) the facility identification number, and
- (2) "contained petroleum, removed: month/day/year".

(b) Removed tanks shall be expeditiously disposed of as regulated underground storage tanks by the following methods:

- (1) The tank may be cut up after the interior atmosphere is first purged or inerted.
- (2) The tank may be crushed after the interior atmosphere is first purged or inerted.
- (3) The tank may not be used to store food or liquid intended for human or animal consumption.
- (4) The tank may be disposed of in a manner approved by the Director.

(c) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

### **R311-204-4. Closure Notice.**

(a) Owners or operators of underground storage tanks which were permanently closed or had a change-in-service prior to December 22, 1988 shall submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(b) Owners or operators of underground storage tanks which are permanently closed or have a change-in-service after December 22, 1988 shall submit a completed closure notice form and the following information within 90 days after tank closure:

(1) All results from the closure site assessment conducted in accordance with Section R311-205, including analytical laboratory results and chain of custody forms.

(2) Effective January 1, 1993, a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include: scale, north arrow, streets, property boundaries, building structures, utilities, underground storage tank system location, location of any contamination observed or suspected during sampling, location and volume of any stockpiled soil, the extent of the excavation zone, and any other relevant features. All sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(c) Owners and operators of underground storage tanks that are temporarily closed for a period greater than three months shall submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(d) All closure notices for permanent and temporary closure shall be submitted on the current approved forms.

### **R311-204-5. Remediation.**

(a) Any UST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a Certified UST Consultant, except as outlined in sections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii), and R311-204-5(b).

(b) At the time of UST closure, a certified UST Remover may overexcavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the Director, in addition to the minimum amount required for closure of the UST. This overexcavation may be performed without the supervision of a certified UST Consultant. Appropriate confirmation samples must be taken by a certified groundwater and soil sampler in accordance with R311-201 for the purpose of determining the extent and degree of contamination.

**KEY: hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: October 10, 2014**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-402; 19-6-403**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-205. Underground Storage Tanks: Site Assessment Protocol.**

**R311-205-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-205-2. Site Assessment Protocol.**

(a) General Requirements.

(1) When a site assessment or site check is required, pursuant to 40 CFR 280 or Subsection 19-6-428(3), owners or operators shall perform or commission to be performed a site assessment or a site check according to the protocol outlined in Rule R311-205 or equivalent, as approved by the Director. Additional environmental samples must be collected when contamination is found, suspected, or as requested by the Director.

(2) This Subsection incorporates by reference the documents referenced in Subsections R311-205-2(a)(2)(A) through (C). These documents contain guidance and methodologies for collecting soil and groundwater samples.

(A) Groundwater samples shall be collected in accordance with "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), published by EPA and dated September 1986, or as determined by the Director.

(B) Surface water samples shall be collected in accordance with protocol established in "Compendium of ERT Surface Water and Sediment Sampling Procedures", published by EPA and dated January 1991, or as determined by the Director.

(C) Soil samples shall be collected in accordance with "Description and Sampling of Contaminated Soils, A Field Pocket Guide", published by EPA and dated November 1991, or as determined by the Director.

(3) Owners and operators must document and report to the Director sample types, sample locations and depths, field and sampling measurement methods, the nature of the stored substance, the type of backfill and native soil, the depth to groundwater, and other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.

(4) The owner or operator shall report the discovery of any release or suspected release to the Director within twenty-four hours. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release. Owners or operators shall begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(5) All environmental samples shall be collected by a certified groundwater and soil sampler who meets the requirements of Rule R311-201. The certified groundwater and soil sampler shall record the depth below grade and location of each sample collected to within one foot.

(6) All environmental samples shall be analyzed within the time frame allowed, in accordance with Table 4.1 of "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), by a Certified Environmental Laboratory. Soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(7) Environmental samples for UST permanent closure or change in service shall be collected according to the protocol outlined in Subsection R311-205-2(b), after the UST system is emptied and cleaned and after the closure plan has been approved.

(8) Environmental confirmation samples are required following overexcavation of soils. Confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F and G. Additional confirmation samples may be required as determined by the Director.

(9) Upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and all other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Director within the specified time frames as outlined in compliance schedules.

(10) When conducting environmental sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as outlined in compliance schedules, or as determined by the Director. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the Director, may be used to satisfy requirements of determining native soil type.

(11) Other types of environmental or quality assurance samples may be required as determined by the Director.

(b) Site Assessment Protocol for UST Closure.

(1) The appropriate number of environmental samples, as described in Subsection R311-205-2(b)(4) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping or dispenser island. Any other samples required by Subsection R311-205-2(a) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2(b)(4) shall be collected from the unsaturated zone immediately above the capillary fringe. Groundwater samples shall be collected using proper surface water collection techniques, from a properly installed groundwater monitoring well, or as determined by the Director. All environmental samples shall be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2(d).

(2) One soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental samples, at each tank and product piping area. For all dispenser islands, only one representative sample to determine native soil type is required. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

(3) For purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.

(4) Environmental Sampling Protocol for UST closures:

(A) For a tank area containing one UST, one soil sample shall be collected at each end of the tank. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(B) For a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(C) Product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections and fittings, at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(D) For dispenser islands, environmental samples shall be collected from the middle of each dispenser island. Additional environmental samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater

was encountered.

(c) Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program.

(1) Owners or operators wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation shall perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a). The tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(2) The owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program. The Director shall review and approve the site check plan prior to its implementation. The site check shall meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2(b), or as determined by the Director on a site-specific basis. Additional sampling may be required by the Director based on review of the proposed site check plan and site specific conditions.

(d) Laboratory Analyses of Environmental Samples.

(1) Environmental samples which have been collected to determine levels of contamination from underground storage tanks shall be analyzed by a Certified Environmental Laboratory. Unless otherwise approved by the Director, the required analytes and corresponding analytical methods shall be:

(A) Gasoline contamination-

(i) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>) by either EPA 8015 or EPA 8260; and

(ii) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), and methyl tertiary butyl ether (MTBE) by either EPA 8021 or EPA 8260.

(B) Diesel fuel contamination-

(i) total petroleum hydrocarbons (extractable TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>) by EPA 8015; and

(ii) benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) by either EPA 8021 or EPA 8260.

(C) Used oil contamination-

(i) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(ii) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by EPA 8021 or EPA 8260.

(D) New oil contamination- oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664.

(E) Contamination from underground storage tanks which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the Director.

(F) Contamination for an unknown petroleum product type-

(i) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>) by either EPA 8015 or EPA 8260;

(ii) total petroleum hydrocarbons (extractable TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>) by EPA 8015;

(iii) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(iv) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.

(2) All original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed. Environmental samples shall be collected and transported under chain of custody according to EPA methods as approved by the Director.

(3) Reporting limits used by laboratories analyzing environmental samples taken under this rule shall be below initial screening levels for the contaminated media under study. Environmental samples shall be analyzed with the least possible dilution to ensure reporting limits are below initial screening levels to the extent possible. If more than one determinative analysis is performed on any given environmental sample, the final dilution factor used and the reporting limit must be reported by the laboratory. As an alternative to diluting environmental samples, the laboratory shall consider using appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference. Any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: February 14, 2011**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-413**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.**

**R311-206-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-206-2. Declaration of Financial Assurance Mechanism.**

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

- (1) meet all requirements for participation in the Environmental Assurance Program, or
- (2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

**R311-206-3. Requirements for Issuance of Certificates of Compliance.**

(a) The Director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

- (1) the owner or operator has a certificate of registration;
- (2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;
- (3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;
- (4) the owner or operator has submitted a letter to the Director stating that based on customary business inventory practices standards there has been no release from the tank;
- (5) the owner or operator has submitted a completed application according to a form provided and approved by the Director, and has declared the financial assurance mechanism that will be used;
- (6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees;
- (7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(2); and
- (8) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

**R311-206-4. Requirements for Environmental Assurance Program Participants.**

(a) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the Director as a specific number of gallons, based on the throughput for the previous calendar year.

(b) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the Director, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(c) In accordance with Subsection 19-6-411(6), the Director may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(e) Auditing of UST facility throughput records.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The Director may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Director.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Director.

(D) All costs of an independent audit shall be paid by the owner or operator.

(f) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Director. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Director may require the owner or operator to submit an independent audit to demonstrate net worth for self-insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(e)(2).

**R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.**

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent reviews of financial assurance documents shall be due on July 1 of the fiscal year for which the review is required.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.102 and 280.104-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Director, and an additional processing fee shall be paid in circumstances as determined by the Director.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Director as follows:

(1) Owners and operators using the financial test of self-insurance shall submit the "Letter from Chief Financial Officer" to the Director within the maximum 120 day period specified in 40 CFR 280.95.

(2) Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Director within 30 days of acceptance of such policy by the insurer or risk retention group.

(A) If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Director as well as the insured.

(B) The insurer shall have a rating of A- or greater by A.M. Best Co.

(3) Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Director within 30 days of issuance from the issuing institution.

(4) Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Director within 30 days after implementation of the trust fund.

(5) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.

(6) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance.

(7) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(8) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Director within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Director within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Director may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Director.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Director shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Director.

**R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.**

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 15A-1-403;

- (3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and
- (4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

**R311-206-7. Revocation and Lapsing of Certificates.**

(a) The Director shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Director may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

**R311-206-8. Delivery Prohibition.**

(a) In accordance with Subsection 19-6-411(7), the Director shall authorize the placement of a delivery prohibition tag identifying a tank:

- (1) for which the certificate of compliance has been revoked in accordance with Section 19-6-414, or
- (2) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5), or
- (3) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(a)(4), or
- (4) that is a new installation, and has not been issued a certificate of compliance.

(b) In accordance with Subsection 19-6-403(1)(b)(i), the Director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank:

- (1) does not have spill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or
- (2) does not have overfill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or
- (3) does not have equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D, or
- (4) does not have equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(c) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(d) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under R311-206-8(e).

(e) The Director may issue written approval for a delivery of petroleum to:

- (1) provide ballast for a new tank during installation, or
- (2) allow for the tank tightness test required under Section 19-6-413.

(f) The delivery prohibition tag shall remain in place until the Director issues:

- (1) for tanks that have a tag in place in accordance with Subsection R311-206-8(a):
  - (A) a new certificate of compliance for the tank, and

- (B) written authorization to remove the delivery prohibition tag, or
- (2) for tanks that have a tag in place in accordance with Subsection R311-206-8(b):
- (A) written authorization to remove the delivery prohibition tag.
- (g) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(f)(1)(B) or Subsection R311-206-8(f)(2)(A), the UST owner or operator shall be subject to:
  - (1) a re-inspection and any applicable fees, and
  - (2) placement of a new delivery prohibition tag on the tank.

**R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.**

(a) Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

- (1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or
- (2) meeting the following requirements:
  - (A) demonstrating compliance with Section R311-206-5, and
  - (B) notifying the Director in writing at least 30 days before the date of cessation of participation in the program, and specifying the date of cessation.
    - (i) The Director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under R311-206-5 for other USTs owned or operated by the owner or operator.
    - (ii) The date of cessation of participation in the program may occur after the date designated in Subsection R311-206-9(a)(2)(B) if the owner or operator does not document compliance with R311-206-5 by the date originally designated.
  - (b) The fund will not give pro-rata refunds.
  - (c) For tanks being removed voluntarily from the program, the date of cessation of participation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

**R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.**

- (a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:
- (1) notify the Director of the intent to participate in the program;
  - (2) comply with the requirements of Subsection 19-6-428(3), and
  - (3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.
  - (b) In accordance with Subsection 19-6-428(3)(b), the Director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:
    - (1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.
    - (2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:
      - (i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;
      - (ii) the most recent simulated leak test for all automatic line leak detectors;
      - (iii) cathodic protection tests, if applicable, and
      - (iv) internal lining inspections, if applicable.
    - (3) The period of non-participation in the Program is less than six months, or the UST is less than ten years old.

**R311-206-11. Environmental Assurance Fee Rebate Program.**

(a) To meet the requirements of Subsection 19-6-410.5(5)(d), each UST Facility participating in the Program shall receive a risk value calculated according to "Environmental Assurance Program Risk Factor Table and Calculation", which is hereby incorporated by reference. The table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(b) The risk value for each facility participating in the Environmental Assurance Program shall be:

(1) calculated on a facility basis;

(2) valid for the calendar year;

(3) based on the facility characteristics as of December 15 of the prior calendar year; and

(4) determined, at sites with mixed equipment, by considering the highest risk-valued UST system component for each risk factor.

(c) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(1) meet the requirements for secondary containment in 40 CFR 280.20, and

(2) meet one of the following:

(A) use an interstitial sensor and documentation of monthly interstitial monitoring, or

(B) documentation of monthly visual checks of a brine-filled interstitial space, or

(C) have the interstitial space tested at least once every three years and be documented to be tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(i) requirements developed by the manufacturer, or

(ii) a Code of Practice developed by a nationally recognized association or independent testing laboratory.

(d) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(1) meet the requirements for secondary containment outlined in 40 CFR 280.20, and

(2) meet one of the following:

(A) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(B) use an interstitial monitoring method not listed in Subsection (d)(2)(A), and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure, or liquid test in accordance with criteria listed in Subsection (c)(2)(C).

(e) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps and under-dispenser containment shall:

(1) be double-walled with monthly documentation of monitoring of the space between the walls, or

(2) be tested at least once every three years to show the piping containment sump or under-dispenser containment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(A) requirements developed by the manufacturer, or

(B) a code of practice developed by a nationally recognized association or independent testing laboratory.

(f) Each facility that participates in the Environmental Assurance Program may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table", which is hereby incorporated by reference. The table, dated June 2, 2014, lists risk tiers and the rebate for each tier.

(g) A facility that begins participation in the Environmental Assurance Program after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the Program.

**KEY: hazardous substances, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: January 1, 2017**

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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.**

**R311-207-1. Definitions.**

Definitions are found in Section R311-200.

**R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.**

(a) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund shall have previously satisfied the requirements of Section R311-206-3(a), have a valid certificate of compliance at the time of product release by the covered UST; and meet the requirements of 19-6-424.

(b) Except as provided in Section R311-207-2(c), a responsible party eligible to receive payments in accordance with Section 19-6-419 shall submit to the Director a written Eligibility Application to make a claim against the Petroleum Storage Tank Trust Fund,

(1) during a period for which that tank was covered by the fund; or

(2) within one year after that fund-covered tank is closed; or

(3) within six months after the end of the period during which the tank was covered by the fund; or

(4) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(c) For eligible releases that are discovered and reported to the Director after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the Director. For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first \$25,000 in eligible costs as determined by the Director.

(d) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in R311-207-2(b), shall constitute a claim against the fund in accordance with Section 19-6-424.

(e) The responsible party's share of eligible costs shall remain the same, regardless of the number of responsible parties who are associated with a release and covered by the fund. Only one responsible party can claim against the fund per release in accordance with 19-6-419.

(f) When a facility has an open release and a subsequent PST Fund eligible release occurs at that facility, the PST Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable by the Utah Underground Storage Tank Act 19-6-419. Additional PST Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release. The Director shall determine the allowable coverage for a subsequent release. When the Director has made a determination that the clean up standards established for the site pursuant to R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status. The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

**R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(a) Upon making a claim for coverage under the fund, and after receiving notice from the Director of eligibility to claim against the fund, the responsible party shall respond to the compliance schedule issued by the Director with work plans. The work plans may address three phases of the compliance schedule as determined by the Director:

(1) tasks required to bring the site under control;

(2) tasks required to determine the extent and degree of the release; and

(3) tasks required to remediate the site until the Director is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Director.

(b) The work plan shall include a budget for the work. The budget shall be in compliance with R311-207-4(e)(1) and (2). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).

(c) The consultant must have a Statement of Qualification approved by the Director.

(1) The initial Statement of Qualification submittal shall include information about the qualifications of all certified UST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans. The Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:

(A) the consultant and other key personnel are of good character and reputation regarding such matters as

control of costs, quality of work, ability to meet deadlines, and technical competence;

(B) the consultant and other key personnel have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law; and

(C) the consultant carries the following insurance:

(i) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

(ii) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and

(iii) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(2) The Statement of Qualification shall be updated annually in January, and shall be approved by the Director for a period of one year. The update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(c)(1)(B) and (C).

(d) The work plan shall include information about the claimant's contract with any proposed consultant or other person performing remedial action in accordance with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Director:

(1) The contract shall be with the consultant, and shall specify the certified UST consultant and other key personnel for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries, the insurance specified in R311-207-3(c)(1)(C).

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Director.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Director may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Director shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Director within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the claimant shall have 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement.

(i) The request for final reimbursement from the fund must be received by the Director within one year from the date of the "No Further Action" letter issued by the Director or reimbursement shall be denied. If a release is re-opened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Director.

(j) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):

(1) the Director shall approve all work plans and associated budgets before the consultant initiates any work, and

- (2) the contract shall comply with Subsections R311-207-3(d)(1), (3), (6), (7), and (8).

**R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(a) In order to receive payment from the fund, a claimant shall submit an invoice to the Director. The invoice from the claimant to the fund shall be on the form or forms provided by the Director. Reimbursement may be on a pay for performance or on a time and material basis as approved in advance by the Director. All costs for time and material reimbursement shall be itemized at a minimum to show the following:

- (1) amounts allocated to each approved work plan budget;
- (2) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
- (3) sampling, reporting, and laboratory analysis costs;
- (4) equipment rental and materials;
- (5) utilities;
- (6) other direct costs; and
- (7) other items as determined by the Director.

(b) All itemized expenses shall indicate the full name and address of the company or contractor providing materials or performing services.

(c) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the Director, with a copy of the original bill provided to the Director by the claimant. The claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Sections R311-207-5 and R311-207-4(e).

(d) For time and material based reimbursement, before receiving payment under Section 19-6-419, the claimant shall provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Director, unless the Director has agreed to other arrangements. The responsible party shall remain primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(e) For time and material based reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor shall include one or more of the following items:

- (1) a minimum of three competitive bids by responsive bidders. To be competitive:

(A) Two of the bids must be from bidders who are not related parties. "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(B) The bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition. The bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(C) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Director. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Director. The Director may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the claimant for these services, regardless of whether the claimant accepts that bid or another;

- (2) sole source justification;

(A) Analytical laboratories may be justified based on service, data quality and cost;

- (3) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

- (4) other documentation as required or requested by the Director.

(f) In accordance with Section 19-6-420, the Director may not authorize payment from the fund for services provided by consultants, contractors, or subcontractors which are in non-compliance with the requirements of Section R311-207 or any other applicable federal, state, or local law.

- (g) Any third party claims brought against the responsible party or any occurrence likely to result in third

party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the Director.

(h) The Director may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Director. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Director.

**R311-207-5. Customary, Reasonable and Legitimate Expenses.**

(a) Costs claimed by the claimant in accordance with Section 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the Director. The Director may determine the amount of fund monies that will be reimbursed to a claimant for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of R311-207-7 or such other methods that are applicable to the item or task. As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate: performing abatement, investigation, site assessment, monitoring, or corrective action activities; providing alternative drinking water supplies; and settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(b) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.

(c) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES as revised November 14, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.

(d) If a claim that does not comply with the requirements of R311-207 is returned by the Director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(e) The Petroleum Storage Tank Trust Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the Director. The rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates in the rate schedule approved by the Director and the materials at cost to the consultant. Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the consultant reasonably should take under the circumstances, and for credits for proceeds the consultant received or should have received from salvage and material returned to suppliers. In no event shall the price paid by the Petroleum Storage Tank Trust Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source. The consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices or other documents acceptable to the Director. No reimbursement shall be made for undocumented labor hours and costs. No reimbursement shall be made for labor hours and costs associated with patenting or marketing.

**R311-207-6. Subrogation.**

When the State makes a payment from the Petroleum Storage Tank Trust Fund, the State shall have the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible. The claimant who receives payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

**R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules.**

(a) This rule incorporates by reference the Consultant Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund-reimbursable activities. Consultants must assign to one of the categories listed in the table, any service time for an individual that is billed to a claimant or directly to the PST Fund and for which reimbursement is claimed, unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories. By

submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills and experience.

(b) A consultant may file with the Director, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The Director shall calculate new allowable reimbursement rates once a year. Consultant fees, reimbursement rate schedules and amendments must be maintained in confidence by and accessible only to the staff of the Director, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure. The calculated maximum allowable reimbursement rates must be maintained in confidence by and accessible only to the staff of the Director.

(c) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Director shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Director shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates. If they do exceed the allowable range, the firm shall then resubmit a revised fee schedule that is within the allowable range. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.

(d) The Director may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(c). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(c).

(e) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(c) for the categories for which that consultant provides services will be calculated. If the average of the consultant's fees is lower than this average, the Director may approve all of the fees as proposed.

(f) The Director may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Director reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Director.

(g) A consultant not filing its schedule of fees must submit its invoices for services formatted in accordance with R311-207-7(a). Any fees which exceed the average of allowable reimbursement rates will be presumed unreasonable.

(h) A claimant or consultant may overcome the presumption that a fee is unreasonable by presenting clear and concise evidence to the Director that the fees are reasonable and customary. Excessive overhead factors will not meet this test.

(i) The Director may determine the amount of fund monies that will be reimbursed to a claimant for commonly performed tasks. The amount of fund monies that will be reimbursed for a particular task, item or activity may be established by R311-207-7(c), competitive bid, market survey or other applicable method as determined by the Director. Public comment will be taken before proposed reimbursement rates are adopted.

#### **R311-207-8. Third Party Claims Apportionment.**

To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(5)(a), yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed, the Director may utilize budget projections to allocate coverage available for the payment of third party claims. The Director may amend budget projections as frequently as he deems appropriate. Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the state risk manager has approved the settlement. Apportionment and priority shall be based upon the order in which an approved and agreed upon claim is received by the Director.

#### **R311-207-9. Consultants Hired by Third Parties.**

- (a) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(e) shall:
  - (1) have an approved PST Trust Fund Statement of Qualification in accordance with Subsection R311-207-3(c), and
  - (2) have approved PST Trust Fund labor rates in accordance with Section R311-207-7.
- (b) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release. The designation shall be made in writing to the Director.
- (c) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):
  - (1) all work plans and budgets shall be pre-approved by the Director in accordance with Subsection R311-207-3(j);
  - (2) the consultant shall comply with Sections R311-207-4 and R311-207-5; and
  - (3) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(h) and (i).

**KEY: financial responsibility, petroleum, underground storage tanks**

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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-208. Underground Storage Tank Penalty Guidance.**

**R311-208-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-208-2. Underground Storage Tank Penalty Criteria.**

(a) This guidance provides criteria to the Director in implementing penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425 and any other Sections authorizing the Director to seek penalties.

(b) The procedures in Rule R311-208 are intended solely for the guidance of the Director and are not intended, and cannot be relied upon, to create a cause of action against the State.

(c) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

**R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.**

(a) The Director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Section 19-1-102(3):

(1) Payment of the penalty may be extended based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) Without regard to financial hardship, the Director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Director.

(3) In some cases, the Director may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the Director. The following criteria shall be used in determining the eligibility of such projects:

- (A) The project must be in addition to all regulatory compliance obligations;
- (B) The project preferably should closely address the environmental effects of the violation;
- (C) The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;
- (D) The project must primarily benefit the environment rather than benefit the violator;
- (E) The project must be judicially enforceable;
- (F) The project must not generate positive public perception for violations of the law.

**R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.**

(a) Where the Director determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than \$500 per occurrence. Factors that mitigate against a higher penalty are:

- (1) A facility's certificate of compliance recently lapsed and product has been delivered.
- (2) A facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the Director.

(b) The Director may assess a penalty against each violator involved in an illegal delivery occurrence. If a violator is operating as an owner/operator and deliverer, the violator may be assessed a penalty in each capacity.

**R311-208-5. Factors for Seeking or Negotiating Amount of Section 19-6-425 Penalties.**

(a) Under Section 19-6-425, the court establishes penalty amounts rather than the Director. Nonetheless, the Director may enter a stipulated penalty agreement with the violator.

(b) The Director shall consider the following factors when negotiating or calculating a penalty to promote a more swift resolution of environmental problems and promote compliance:

(1) Economic benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(2) Gravity of the violation. The extent of deviation from the rules and the potential for harm to health and the environment, regardless of the extent of the harm that actually occurred. This factor may be adjusted upward or downward depending on:

(A) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(B) The willfulness or negligence of the violation;

(C) The history of compliance or noncompliance; and

(D) Other unique factors including how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance

(3) Environmental sensitivity. The actual impact of the violation(s) that occurred.

(4) The number of days of noncompliance.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

(c) All cases involving major violations with actual or high-potential for harming public health or the environment, and all cases involving a history of repeat violations by the same violator will require a penalty as a part of any settlement, unless good cause is shown for not seeking a penalty.

(d) Where the Director determines that a penalty is appropriate under Section 19-6-425, the Director may negotiate the penalty based on the following categories and ranges:

(1) Major Violations: \$5,000 to \$10,000 per violation. This category includes major deviations from the requirements of the rules or Act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.

(2) Moderate Violations: \$2,000 to \$7,000 per violation. This category includes moderate deviations from the requirements of the rules or Act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.

(3) Minor Violations: Up to \$3,000 per violation. This category includes slight deviations from the rules or Act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health and the environment, or violations that may have a minor adverse effect on the regulatory program.

(e) The Director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance to R311-208-5.

**KEY: penalties, petroleum, underground storage tanks\***

**Date of Enactment or Last Substantive Amendment: September 16, 1996**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.**

**R311-209-1. Definitions.**

Definitions are found in Section R311-200.

**R311-209-2. Use of the State Cleanup Appropriation.**

The Director shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, as authorized by Sections 19-6-405.7, 19-6-409(5) and 19-6-424.5(9) respectively, when:

- (a) The release is from a regulated UST,
- (b) The owner or operator is not fully covered by the Petroleum Storage Tank Trust Fund,
- (c) The release is a direct or potential threat to human health or the environment, and
- (d) The owner or operator is unknown, unable, or unwilling to bring the site under control or remediate the site to achieve the clean-up goals as described in Section R311-211, or
- (e) Other relevant factors are evident as determined by the Director.

**R311-209-3. Criteria for Allocating Petroleum Storage Tank Cleanup Funds and the State Cleanup Appropriations.**

When determining priorities for authorizing action or expenditures from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, the Director shall give due emphasis to releases that present a threat to the public health or the environment on a case-by case basis using the following criteria:

- (a) The immediate or direct threat to public health or the environment,
- (b) The potential threat to public health or the environment,
- (c) The economic consideration and cost effectiveness of the action, and
- (d) The technology available, or
- (e) Other relevant factors as determined by the Director.

**R311-209-4. Recovery of Management and Oversight Expenses.**

(a) Beginning July 1, 2015, the Director, in determining whether to recover management and oversight expenses pursuant to Utah Code Ann. 19-6-420(10), may consider the following factors:

- (1) The responsible party's ability to pay; and
- (2) Any other relevant factors the Director determines to be appropriate.

(b) At any time before or after the Director initiates collection of management and oversight expenses, the responsible party may apply to the Director for an exemption from paying these expenses. The responsible party shall furnish all documentation and information in the form and manner as prescribed by the Director in support of the application. The Director, in his sole discretion, may grant an exemption based on the responsible party's application in consideration of the factors listed in Subsection (a).

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: October 10, 2014**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-409; 19-6-420**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-210. Administrative Procedures.**

**R311-210-1. Administrative Procedures.**

Administrative proceedings are governed by Rule R305-7.

**KEY: administrative proceedings, underground storage tanks, hearings, adjudicative proceedings**

**Date of Enactment or Last Substantive Amendment: August 29, 2011**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-403; 63G-4-201 through 205; 63G-4-503**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites.**

**R311-211-1. Definitions.**

Definitions are found in Section R311-200.

**R311-211-2. Source Elimination.**

The initial step in all corrective actions implemented at UST and CERCLA sites is to take appropriate action to eliminate the source of contamination either through removal or appropriate source control.

**R311-211-3. Cleanup Standards Evaluation Criteria.**

Subsequent to source elimination, cleanup standards for remaining contamination which may include numerical, technology-based or risk-based standards or any combination of those standards, shall be determined on a case-by-case basis, taking into consideration the following criteria:

- (a) The impact or potential impact of the contamination on the public health;
- (b) The impact or potential impact of the contamination on the environment;
- (c) Economic considerations and cost effectiveness of cleanup options; and
- (d) The technology available for use in cleanup.

**R311-211-4. Prevention of Further Degradation.**

In determining background concentrations, cleanup standards, and significance levels, levels of contamination in ground water, surface water, soils or air will not be allowed to degrade beyond the existing contamination levels determined through appropriate monitoring or the use of other data accepted by the Board or the Director as representative.

**R311-211-5. Cleanup Standards.**

(a) The following shall be the minimum standards to be met for any cleanup of regulated substances, hazardous material, and hazardous substances at a UST or CERCLA facility in Utah:

(1) for water-related corrective action, the Maximum Contaminant Limits (MCLs) established under the federal Safe Drinking Water Act or other applicable water classifications and standards; and

(2) for air-related corrective action, the appropriate air quality standards established under the Federal Clean Air Act.

(3) Other standards as determined applicable by the Board may be utilized.

(b) Cleanup levels below the MCLs or other applicable water, soil, or air quality standards may be established by the Board on a case-by-case basis taking into consideration R311-211-3 and R311-211-4.

(c) In the case of contamination above the MCL or other applicable water, soil, or air quality standards, if, after evaluation of all alternatives, it is determined that applicable minimum standards cannot reasonably be achieved, cleanup levels above these minimum standards may be established on a case-by-case basis utilizing R311-211-3 and R311-211-4. In assessing the evaluation criteria, the following factors shall be considered:

- (1) quantity of materials released;
- (2) mobility, persistence, and toxicity of materials released;
- (3) exposure pathways;
- (4) extent of contamination and its relationship to present and potential surface and ground water locations and uses;
- (5) type and levels of background contamination; and
- (6) other relevant standards and factors as determined appropriate by the Board.

**R311-211-6. UST Facility Cleanup Standards.**

(a) This rule incorporates by reference the Initial Screening Levels table dated November 1, 2005. The table lists initial screening levels for UST sites.

(b) If the Director determines that a release from an underground storage tank has occurred, the Director shall evaluate whether the contamination at the site exceeds Initial Screening Levels for the contaminants released. The Director may require owners and operators to submit any information that the Director believes will assist in making this evaluation.

(c) If all contaminants are below initial screening levels, the Director shall evaluate the site for No Further Action determination.

(d) This rule incorporates by reference the Tier 1 Screening Criteria table dated November 1, 2005. The table lists cleanup criteria for UST sites. Tier 1 screening levels are only applicable when the following site conditions are met:

(1) No buildings, property boundaries or utility lines are located within 30 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively, and;

(2) No water wells or surface water are located within 500 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively.

(e) If any contaminants from a release are above the Initial Screening Levels, the Director shall require owners and operators to submit all relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(1) If all Tier 1 Screening Criteria have been met, the Director shall evaluate the site for No Further Action determination.

(2) If any of the Tier 1 Screening Criteria have not been met owners and operators shall proceed as described below.

(i) Owners and operators shall conduct a site investigation to provide complete information to the Director regarding the factors outlined in R311-211-5(c) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the Director site-specific cleanup standards based upon an analysis of the factors outlined in R311-211-5(c). Alternatively, the owners and operators may propose for the approval of the Director the Initial Screening Levels established in R311-211-6(a) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the Director prior to completing the site investigation. However, if corrective action is implemented in separate phases, the Director will not make a No Further Action determination until all factors outlined in R311-211-5(c) are evaluated.

(iv) Owners and operators may then propose and conduct corrective action approved by the Director to attempt to reach the approved site-specific cleanup standards. If the owners and operators demonstrate that the approved site-specific cleanup standards have been met and maintained based upon sampling at intervals and for a period of time approved by the Director, the Director shall evaluate the site for No Further Action determination.

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the Director may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in R311-211-5(c) for the Director's approval. The Director may also require further investigation to fully define the extent and degree of the contamination if the passage of time or other factors creates the possibility that existing data may no longer be reliable.

**R311-211-7. Significance Level.**

(a) Where contamination is identified that is below applicable MCLs, water classification standards, or air quality standards or where applicable standards do not exist for either the parameter in question or the environmental media in which the contamination is found, the cleanup standard shall be established using R311-211-3 and will be set between background and the observed level of contamination. Should it be determined that the observed level of contamination will be allowed to remain, this becomes the significance level.

(b) At any time, should continued monitoring identify contamination above the significance level, the criteria of R311-211-3 will be reapplied in connection with R311-211-4 to re-evaluate the need for corrective action and determine an appropriate cleanup standard.

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: May 15, 2006**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106; 19-6-403**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-212. Administration of the Petroleum Storage Tank Loan Program.**

**R311-212-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-212-2. Declaration of Loan Application Periods, and Loan Application Submittal.**

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9). Loan applications shall be accepted during application periods designated by the Director.

(b) At least one application period shall be designated each calendar year if, on January 1,:

(1) the current balance due for all outstanding loans is less than twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, and

(2) the cash balance of the Petroleum Storage Tank Trust Fund exceeds \$10,000,000.

(c) If the requirements of Subsections R311-212-2(b)(1) and (b)(2) are not met on January 1, but are met at a later time in the calendar year, the Director may designate an application period.

(d) An open application period will close if:

(1) the current balance due for all outstanding loans exceeds twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, or

(2) the cash balance of the Petroleum Storage Tank Trust Fund is less than \$10,000,000.

(e) If an open application period closes as required by Subsection R311-212-2(d), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(a).

(f) Applications must be received by the Director by 5:00 p.m. on the last day of the application period.

(g) Loan applications received outside the application period shall be invalid.

**R311-212-3. Eligibility Review.**

(a) The Director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5), 19-6-409(6), 19-6-409(7), and 19-6-409(8).

(b) To meet the eligibility requirements of 19-6-409(6) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-409(6) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-409(5), the loan request must be for the purpose of:

- (1) Upgrading petroleum USTs;
- (2) replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

#### **R311-212-4. Prioritization of Loan Applications.**

(a) When determined by the Director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Director by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through (8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

#### **R311-212-5. Loan Application Review.**

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Director may require payment of costs in advance. The Director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The applicant must close the loan within 30 days after the Director conveys the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Director if the closing is delayed due to circumstances beyond the applicant's control.

#### **R311-212-6. Security for Loans.**

(a) When an applicant applies for a loan of greater than \$30,000, the applicant must pledge for security

personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Director.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Director by a title company or appropriate professional person approved by the Director.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be seven years.

#### **R311-212-7. Procedure for Making Loans.**

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Director.

(b) The Director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins. The initial disbursement shall be for the lesser of 40 per cent of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done. Disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the Director.

(1) If an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement. Disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the Director, following the initial disbursement.

(2) If work is not initiated or completed within the time periods established in Subsection R311-212-7(b)(1), the loan balance shall be paid within 30 days of notice provided by the Director.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

#### **R311-212-8. Servicing the Loans.**

(a) The Director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8)(b)(ii). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment shall be due on a date established by the Director. Subsequent installment payments shall be due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Director shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Director more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Director by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

#### **R311-212-9. Recovering on Defaulted Loans.**

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under Subsection R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Director need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

#### **R311-212-10. Forms.**

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the Director for making loans.

(1) Loan Application version 7/14/16

(2) Balance Sheet version 7/29/14

(3) Loan Agreement version 7/29/14

(4) Corporate Authorization version 7/29/14

(5) Promissory Note version 7/29/14

(6) Extension and Modification of Promissory Note Agreement version 7/29/14

(7) Security Agreement version 7/29/14

(8) Hypothecation Agreement version 7/29/14

(9) General Pledge Agreement version 7/29/14

(10) Assignment version 7/29/14

(11) Assignment of Account version 7/29/14

(12) Trust Deed version 7/29/14

(13) Trust Deed Note version 7/29/14

(14) Extension and Modification of Trust Deed Note Agreement version 7/29/14

(b) The Director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

#### **R311-212-11. Rules in Effect.**

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the

parties.

**KEY:** hazardous substances, petroleum, underground storage tanks

**Date of Enactment or Last Substantive Amendment:** January 1, 2017

**Notice of Continuation:** April 10, 2012

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-403; 19-6-409