

**John Hultquist - Re: eRules 2--Nonsubstantive Change Review Requested for No. 34963 for the 07/15/2011 Bulletin**

---

**From:** Hunter Finch  
**To:** Hultquist, John; Rules, Administrative  
**Date:** 7/13/2011 8:02 AM  
**Subject:** Re: eRules 2--Nonsubstantive Change Review Requested for No. 34963 for the 07/15/2011 Bulletin

---

DAR: Agency staff have correctly determined this rule amendment should be recorded as a nonsubstantive change from Environmental Quality.

W. Hunter Finch, M.Ed., MSW, LCSW  
Budget and Policy Analyst  
Regulatory Law Analyst

Governor's Office of Planning & Budget  
Utah State Capitol  
350 N. State Street #150  
Salt Lake City, Utah 84114  
Phone# 801-538-1553  
Fax# 801-538-1547  
[hfinch@utah.gov](mailto:hfinch@utah.gov)

>>> <rules@utah.gov> 7/12/2011 6:08 PM >>>

A nonsubstantive rule change has been submitted that requires the Governor's Office to review and verify that the wording changes do not substantively alter the meaning of the rule.

DAR No. 34963  
Department: Environmental Quality  
Agency: Radiation Control  
Code Ref. No.: R313-25-8  
Title: Technical Analyses  
Filing Type: Nonsubstantive Change

You may review this rule by visiting: <http://erules.rules.utah.gov/erules/secure/loginAuthorize.action?emailUrlPassing&ruleId=151220>

The rule text can be viewed by clicking the "Rule Text" button near the bottom of the form. Please reply to this e-mail with the results of the review.

Thank you!  
Division of Administrative Rules  
[rules@utah.gov](mailto:rules@utah.gov)  
801-538-3218

## NOTICE OF NONSUBSTANTIVE RULE

## Agency Information

1. Agency: Environmental Quality - Radiation Control  
 Room no.: Third Floor  
 Building:  
 Street address 1: 195 N 1950 W  
 Street address 2:  
 City, state, zip: SALT LAKE CITY UT 84116-3085  
 Mailing address 1: PO BOX 144850  
 Mailing address 2:  
 City, state, zip: SALT LAKE CITY UT 84114-4850

## Contact person(s):

Name:	Phone:	Fax:	E-mail:
John Hultquist	801-536-4623	801-536-4250	jhultquist@utah.gov

(Interested persons may inspect this filing at the above address or at DAR during business hours)

## Rule Information

- DAR file no: 34963 Date filed: 06/23/2011 01:47 PM  
 State Admin Rule Filing Key: 151220  
 Utah Admin. Code ref. (R no.): R 313 - 25 - 8  
 Changed to Admin. Code ref. (R no.): - -

## Title

2. Title of rule or section (catchline):  
 Technical Analyses

## Rule Change Purpose

3. Purpose of or reason for the nonsubstantive change:

The purpose of the nonsubstantive change is to correct a rule reference within a rule. Specifically, in Subsection R313-25-8(2) the reference to Subsection R313-28-8(1) should read Subsection R313-25-8(1).

## Response Information

4. This change is a response to comments by the Administrative Rules Review Committee.  
 No

## Rule Change Summary

5. Summary of the nonsubstantive change:

The rule cited is a typographical error, because Rule R313-28 is regarding the use of x-rays in the healing arts, which has nothing to do with site-specific performance assessments. The original intent was to reference the rule above in this specific sentence regarding a site-specific performance assessment. In addition, there is no Section R313-28-8, therefore when this rule was previously amended it was simply an typographical error and is referring to Subsection R313-25-8(1) and the site-specific performance assessment rule.

## Incorporated Materials

6. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page): Publisher:
---

	Date Issued: Issue, or version: ISBN Number: ISSN Number: Cost of Incorporated Reference: Adds, updates, removes:
--	--

Indexing Information

- 7. Indexing information - keywords (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
  - radiation
  - depleted uranium
  - radioactive waste disposal

File Information

- 8. Attach an RTF document containing the text of this rule change (filename):
  - There is a document associated with this rule filing.

To the Agency

A nonsubstantive change becomes effective on the date the Division of Administrative Rules makes the change to the rule in the Utah Administrative Code (see Section R15-4-6).

Agency Authorization

Agency head or designee, and title:                      Rusty Lundberg Director                      Date (mm/dd/yyyy): 06/16/2011

**R313. Environmental Quality, Radiation Control.**

**R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.**

**R313-25-8. Technical Analyses.**

(1) The licensee or applicant shall conduct a site-specific performance assessment and receive Executive Secretary approval prior to accepting any radioactive waste if:

(a) the waste was not considered in the development of the limits on Class A waste and not included in the analyses of the Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782. U.S. Nuclear Regulatory Commission. September 1981, or

(b) the waste is likely to result in greater than 10 percent of the dose limits in R313-25-19 during the time period at which peak dose would occur, or

(c) the waste will result in greater than 10 percent of the total site source term over the operational life of the facility, or

(d) the disposal of the waste would result in an unanalyzed condition not considered in R313-25.

(2) A licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under R313-~~25~~25-8(1) shall notify the Executive Secretary of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of the radioactive waste.

(3) The licensee shall not accept radioactive waste until the Executive Secretary has approved the information submitted pursuant to R313-25-8(1) or (2).

(4) The licensee or applicant shall also include in the specific technical information the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, surface drainage of the

disposal site, and the effects of changing lake levels. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(5)(a) Notwithstanding R313-25-8(1), any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after June 1, 2010, shall submit for the Executive Secretary's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.

(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Executive Secretary of the performance assessment required in R313-25-8(5)(a).

(c) For purposes of this R313-25-8(5) only, "concentrated depleted uranium" means waste with depleted uranium concentrations greater than 5 percent by weight.

**KEY: radiation, radioactive waste disposal, depleted uranium**

**Date of Enactment or Last Substantive Amendment: April 4, 2011**

**Notice of Continuation: October 5, 2006**

**Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108**

!-dar--

**From:** <rules@utah.gov>  
**To:** <rules@utah.gov>, <khansen@utah.gov>, <jhultquist@utah.gov>, <mbroschi@u...>  
**Date:** 4/4/2011 7:48 AM  
**Subject:** eRules 2--Notice of Effective Date Submitted: No. 34240

**NOTICE OF EFFECTIVE DATE**

In accordance with UT Code Section 63G-3-301 and Rule R15-4, an effective date has been submitted for the following administrative rule:

DAR No. 34240

Department: Environmental Quality

Agency: Radiation Control

Code Ref. No.: R313-25-8



Title: Technical Analyses

Filing Type: Change in Proposed Rule

Effective Date: 04/04/2011

Available at: <http://erules.rules.utah.gov/erules/secure/loginAuthorize.action?emailUriPassing&ruleId=150619>

Thank you!  
Division of Administrative Rules  
rules@utah.gov  
801-538-3218

 	
<b>eRules: Online Rule Filing Application</b>	
<p><b>ATTENTION:</b>          Do not open eRules in more than one browser window at a time.          eRules is available 24 hours a day, 7 days a week.          Division staff are available during regular business hours -- 7 a.m. to 6 p.m., Monday through Thursday -- to respond to questions or problems.          If you must file on the filing deadline, please file well before 6 p.m.          If you have questions about eRules or the rulemaking process, please call:          Mike Broschinsky: 801-538-3003, Nancy Lancaster: 801-538-3218, or Ken Hansen: 801-538-3777.</p>	
Proposed Rule Types	<b>NOTICE OF EFFECTIVE DATA SUBMITTED</b>
Change in Proposed Rule (CPR)	<p>You have submitted your notice of effective date. Each notice of effective date you submit will generate a separate E-mail message confirming that the filing has been received. If you DO NOT receive an E-mail confirmation within the next 30 minutes, please contact Mike Broschinsky (801-538-3003 or mbroschi@utah.gov) or Nancy Lancaster (801-538-3218 or nllancaster@utah.gov).</p> <p>We recommend that you print this page for your records.</p> <p>Please click on the "Continue" button at the bottom of this screen to return to the agency filing list. On this list, you should see that the "Eff. Date" link is now gone.</p> <p style="text-align: center;">** Do NOT use the browser's BACK button to modify the form or to complete another form. **</p>
Nonsubstantive Change	
Emergency	
Five-year Review	<input type="button" value="Continue"/>
Five-Year Review Extension	
Public Notice	
Help	
Agency Filing List	
Filing Time Frames	
Back to Administrative Rules Home	

**Environmental Quality, Radiation  
Control  
R313-25-8  
Technical Analyses**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 34240

FILED: 02/15/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change in proposed rule is to further clarify when a site-specific performance assessment is required to be submitted to the Executive Secretary for approval regarding radioactive waste receipt and disposal based on the incorporation of comments received during the public comment period and approval of the proposed changes during the February 2011 Radiation Control Board meeting.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R313-25-8(1)(a) adds language that clarifies when a performance assessment would be required by stating the waste was not part of the development of the limits on Class A waste and not included in the Draft Environmental Impact Statement prepared by the U.S. Nuclear Regulatory Commission for the development of Federal Rule 10 CFR 61. "Licensing Requirements for Land Disposal of Radioactive Waste." Item 1a of the proposed rule becomes item 1(b), and item 1(b) becomes item 1(c). In addition, item 1(d) is added to include a condition for waste that would result in an unanalyzed condition not considered in Rule R313-25 "License Requirements for Land Disposal of Radioactive Waste - General Provisions." Additionally, the words "the development of 10 CFR 61.55" was removed from 1(d). And lastly, the phrase "and changing lake levels" was removed from Subsection R313-25-8(4)(a). (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 1, 2010, issue of the Utah State Bulletin, on page 48. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-3-104(4)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The State of Utah receives fees from licensees that dispose of radioactive waste under Section 19-3-106. Currently, EnergySolutions, LLC is the

only radioactive waste disposal facility that accepts and disposes of radioactive waste. If this rule is promulgated, certain wastes may not be accepted at the facility until it has completed a site-specific performance assessment and it is approved by the Executive Secretary. The financial impacts on waste fees received by the State of Utah are difficult to specify because the impact depends on the following information that is not known at this time: when a site-specific performance assessment will be submitted and when it will be approved; when the rule takes effect it may cause waste receipts to be delayed; or whether there are competitors for the waste such that EnergySolutions could lose receipts altogether.

♦ **LOCAL GOVERNMENTS:** Tooele County collects impact fees from waste facilities, including EnergySolutions. Tooele County's budget is therefore likely to be affected. Because of the reasons described above, the specific impact cannot be known at this time. However, the proposed change will not impact wastes that are currently approved for disposal and for which disposal fees are paid.

♦ **SMALL BUSINESSES:** No small business in Utah will be directly impacted. This amendment changes a rule that is specific to companies or licensees that dispose of radioactive waste. As a result of this narrow scope, there should be no direct impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Board is not aware of any direct impact on other entities. This amendment changes a rule that is specific to companies or licensees that dispose of radioactive waste. As a result of this narrow scope, there should be no direct impact on other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** A radioactive waste disposal facility may have to incur the cost of preparing a site-specific performance assessment under this rule, and may also bear the cost of the Division of Radiation Control's review of that performance assessment. The cost of a performance assessment is likely to be over \$1,000,000 initially, however, the licensee has initiated a performance assessment prior to this rule change and therefore, depending on the waste stream, may only have to modify a previous performance assessment and therefore, costs could be substantially lower.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** If the rule is promulgated, one Utah business - EnergySolutions, LLC - may be unable to accept certain wastes until it has submitted a site-specific performance assessment and the performance assessment has been approved. The impact of this rule is hard to ascertain, because the Division of Radiation Control does not know when EnergySolutions will submit a performance assessment and when it will be approved, when EnergySolutions would otherwise have received certain wastes that would require them to prepare and submit a performance assessment, and whether or not future waste shipments will require a site-

specific performance assessment prior to receipt. However, if a performance assessment is required, EnergySolutions will bear the cost of carrying out, preparing, and submitting the performance assessment which could be substantial.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 RADIATION CONTROL  
 ROOM THIRD FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON

THIS RULE MAY BECOME EFFECTIVE ON: 03/31/2011

AUTHORIZED BY: Rusty Lundberg, Director

### R313. Environmental Quality, Radiation Control.

#### R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.

##### R313-25-8. Technical Analyses.

(1) The licensee or applicant shall conduct a site-specific performance assessment and receive Executive Secretary approval prior to accepting any radioactive waste if:

(a) the waste ~~was not considered in the development of the limits on Class A waste and not included in the analyses of the Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782, U.S. Nuclear Regulatory Commission, September 1981, or~~

~~(b) the waste is likely to result in greater than 10 percent of the dose limits in R313-25-19 during the time period at which peak dose would occur, or~~

~~(b)c) the waste will result in greater than 10 percent of the total site source term over the operational life of the facility, or~~

~~(e)d) the disposal of the waste would result in an unanalyzed condition not considered in [the development of 10 CFR 61.55] R313-25.~~

(2) A licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under R313-28-8(1) shall notify the Executive Secretary of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of the radioactive waste.

(3) The licensee shall not accept radioactive waste until the Executive Secretary has approved the information submitted pursuant to R313-25-8(1) or (2).

(4) The licensee or applicant shall also include in the specific technical information the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals~~[, and changing lake levels]~~. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, surface drainage of the disposal site, and the effects of changing lake levels. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(5)(a) Notwithstanding R313-25-8(1), any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after June 1, 2010, shall submit for the Executive Secretary's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.

(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Executive Secretary of the performance assessment required in R313-25-8(5)(a).

(c) For purposes of this R313-25-8(5) only, "concentrated depleted uranium" means waste with depleted uranium concentrations greater than 5 percent by weight.



**SUMMARY OF PUBLIC COMMENTS & RESPONSE TO COMMENTS  
PROPOSED RULE CHANGES**

**Rule R313-25-8 Technical Analysis - Performance Assessment**

February 1, 2011

**Introduction**

On November 15, 2010, the Radiation Control Board approved the Division of Radiation Control (DRC) to file with the Division of Administrative Rules proposed rule changes to R313-25-8 *Technical Analysis - License Requirements for Land Disposal of Radioactive Waste - General Provisions*. The proposed rule was published in the December 1, 2010 edition of the Utah Bulletin initiating a public comment period. The comment period ended on January 4, 2011.

Written comments received during the public comment period were reviewed and were determined to be either related or unrelated to the proposed rule. In all, nine commenters submitted comments. Comments ranged from a single issue to as many as eight separate issues. Each separate comment (fourteen in all) was determined to be either related or unrelated to the applicable regulatory issue regarding the proposed rule changes. For comments judged to be applicable to the proposed rule, a response was prepared. The responses are presented in Attachment A. The change in proposed rule is presented in Attachment B, and the received comments are in Attachment C. Comments received that were unrelated to the proposed rule but involve public policy or outside the scope of the proposed rule are summarized in the following table:

<b><u>Unrelated Comment Topic</u></b>	<b><u>Number of Comments Received</u></b>
Blending/mixing B and C waste with A	2
Expansion/Enlargement	1
Long term custodial responsibility of DU or deep burial	1
Wait for federal government to revise BTP on blending/unique waste streams	1
Testing insects, birds and animals as part of PA	1
Temperature monitoring of buried waste containers/embankment stability	1
Barrel/container integrity/corrosive environment	1
Employee tracking for any medical issues caused by Clive leakage	1
Why barrels are called DU	1
Current Regulations are sufficient to protect public	1

**Summary**

The comments related to the proposed rule specifically dealt with adding or deleting language for clarity as to when a performance assessment would be required, and compatibility with existing Federal Rule. The pertinent comments are summarized below.

EnergySolutions (ES) proposed additional language to the rule that would better clarify when a performance assessment would be required with respect to the *Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste*, (NUREG 0782) September 1981. Furthermore, ES commented that the 60 days prior to the anticipated acceptance of the waste was not necessary and irrelevant based on condition (3) that requires approval by the Executive Secretary prior to accepting the waste. Also, ES proposed the deletion of 1(c) "*the disposal of the waste would result in an unanalyzed condition not considered in the development of 10 CFR 61.55.*" They indicate that Part 61 EIS is a more specific reference to define what has not been analyzed and is more rigorous and sufficient in identifying wastes that require a site-specific analysis. Finally, ES proposed the following language be deleted from 4(a) "and changing lake levels" and from 4(d) "and the effects of changing lake levels." Reasoning for the deletion is that changing lake level cannot be a pathway and 4(a) already includes air, soil, groundwater, and surface water exposure pathways.

HEALUtah proposed additional language. Specifically HEALUtah proposed 1(d): "*for any other reason, the disposal of the waste would result in an unanalyzed condition.*" Heal indicates that this additional language would ensure that unique waste streams and other physical facility changes will be analyzed in required performance assessments. In addition, Heal mentions that this language was in an earlier draft rule proposal.

The Nuclear Regulatory Commission (NRC) indicated based on their review of the proposed regulation and without other significant changes, the proposed rule would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) procedure SA-200. However, the NRC clarified that under current procedures, the determination may only be made based on a review of the final Utah regulations.

Fourteen specific comments were received during the comment period. Eleven comments were unrelated to the context of the proposed rule and basically were comments regarding waste blending, disposal of Depleted Uranium (DU), expansion or enlargement, and contents of a performance assessment. Three comments were related to the proposed rule and the DRC provides a response to those comments in Attachment A. below.

In addition, the DRC has determined an error was found in the proposed rule documents that were posted on the DRC's web page and provided in the November Radiation Control Board packet. Specifically, the last 4 items (a, b, c, and d) were brought forward into the proposed rule change from chapter R313-25-17. The proposed rule change R313-25-8 submitted to the Division of Administrative Rules is correct and does not contain the last four items found on the other documents. In as much the change in proposed rule in Attachment B does not contain those items found in the other documents.

## ATTACHMENT A

### RESPONSES TO COMMENTS

The DRC's responses to the comments that were deemed related are provided below.

1. EnergySolutions (ES) proposed additional language to the rule that would better clarify when a performance assessment would be required with respect to the *Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste, (NUREG 0782) September 1981*. Furthermore, ES commented that the 60 days prior to the anticipated acceptance of the waste was not necessary and irrelevant based on condition (3) that requires approval by the Executive Secretary prior to accepting the waste. Also, ES proposed the deletion of 1(c) "the disposal of the waste would result in an unanalyzed condition not considered in the development of 10 CFR 61.55. They indicate that the Part 61 EIS is a more specific reference to define what has not been analyzed and is more rigorous and sufficient in identifying wastes that require a site-specific analysis. Finally, ES proposed the following language be deleted from 4(a) "and changing lake levels" and from 4(d) "and the effects of changing lake levels." Reasoning for the deletion is that changing lake level cannot be a pathway and 4(a) already includes air, soil, groundwater, and surface water exposure pathways.

#### **Response**

The Division agrees that adding language regarding the draft EIS is more specific in defining what has been or what has not been analyzed. The DRC concurs with the additional language to 1(a). The DRC understands that ES requests item 1(a) take the place of 1(c). The DRC has evaluated this request and does not agree with the removing 1(c) from the proposed rule. In addition, the Division based on its evaluation of the comments, will change the language to 1(c) for clarity of when an unanalyzed condition would be required with respect to State rule R313-25 Land Disposal of Radioactive Waste. Furthermore, the DRC moves 1(c) to 1(d) in the proposed rule.

In regards to the removal of the 60 day timeframe, the DRC disagrees with the comment that the 60 day notification is irrelevant based on condition 3. The 60 day requirement does matter in regards to when a submission is provided to the Executive Secretary for reviewing a previously approved site specific Performance Assessment (PA). Condition 2 of the proposed rule is to allow the DRC to evaluate the radioactive waste proposed and the previous PA to confirm the PA addressed the performance requirements of the landfill. This is a quality assurance measure regarding future waste and previous site specific PA's. The proposed rule does not mean the review by the DRC or Executive Secretary will be completed in that 60 day timeframe.

In regards to the removal of the phrase “and changing lake levels” in condition 4(a) and 4(d), the DRC agrees that specific language in 4(a) deals with pathways in which receptors may receive a dose from the radioactive material. Surface water is already listed as a potential pathway; therefore, the DRC concurs that the phrase can be removed from condition 4(a). However, with respect to 4(d), the DRC recommends that the phrase remain in the condition. It is appropriate to analyze or consider this scenario with respect to long term stability. The commenter is correct in indicating that it may not necessarily be relevant to a performance period. However, it may be relevant to the performance period; therefore, it allows for the assessment of such scenario when applicable.

2. HEALUtah proposed additional language be added as 1(d): *“for any other reason, the disposal of the waste would result in an unanalyzed condition.”* Heal indicates that the additional language would ensure that unique waste streams and other physical facility changes will be analyzed in required performance assessments. In addition, Heal mentions that this language was in an earlier draft rule proposal.

#### **Response**

The DRC realizes this statement is subjective and could require additional costs to a licensee based on Executive Secretary discretion. However, unforeseen waste streams could be captured by this language along with any future site physical changes. To ensure waste disposal activities are protective of human health and the environment in the future, the DRC believes it is reasonable to insert this language into the proposed rule with added language that specifies the unanalyzed conditions were not considered in State rule R313-25 Land Disposal of Radioactive Waste. The revised language becomes 1(d) in the proposed rule.

3. Nuclear Regulatory Commission (NRC) indicated based on their review of the proposed regulation and without other significant changes, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) procedure SA-200.

#### **Response**

The DRC acknowledges the NRC’s response and appreciates the timely review of the proposed rule. The DRC also understands that under current NRC procedures, the findings of compatibility can only be made based on a review of the final Utah regulations. Therefore, the DRC acknowledges the request by the NRC that when the rule is final and published in the state digest, the DRC will submit to the FSME Office the final Utah regulation.

Based on DRC's review of the comments received during the comment period, the following changes to the proposed rule are incorporated. The DRC understands the proposed rule would have to be filed again under a "change in proposed rule". However, a comment period would not be required, only it would require a minimum of 30 days before the rule changes can become final.