



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

Department of  
Environmental Quality

Alan Matheson  
Executive Director

DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL  
Scott T. Anderson  
Director

A meeting of the Waste Management and Radiation Control Board has been scheduled for September 13, 2018 at 1:30 p.m. at the Utah Department of Environmental Quality, Multi-Agency State Office Building (Conference Room #1015), 195 North 1950 West, SLC.

(One or more members of the Board may participate telephonically.)

AGENDA

- I. Call to Order.
- II. Approval of the Meeting Minutes for the July 12, 2018 Board Meeting  
**(Board Action Item)** ..... Tab 1
- III. Approval of the Meeting Minutes for the August 30, 2018 Emergency Board Meeting  
**(Board Action Item)** ..... Tab 2
- IV. Presentation by Attorney General’s Office on Conflict of Interest.
- V. Underground Storage Tanks Update..... Tab 3
- VI. Administrative Rules ..... Tab 4
  - A. Approval of final adoption of proposed changes to the Used Oil Rules R315-15-16, Grants, to provide additional clarity and more detailed direction regarding the grant application, grant issuance, implementation and reimbursement processes  
**(Board Action Item).**
  - B. Approval of final adoption of proposed changes to the Hazardous Waste Rules R315-260, Hazardous Waste Management System and R315-261, General Requirements – Identification and Listing of Hazardous Waste, to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664) **(Board Action Item).**

(Over)

- C. Approval to proceed with formal rulemaking and public comment on proposed changes to Solid Waste Rules R315-301, to add a new subsection (R315-301-7) to establish self-inspection requirements in accordance with Section 19-6-109 of the Solid and Hazardous Waste Act (**Board Action Item**).

VII. Hazardous Waste Section ..... Tab 5

- A. Approval of proposed Stipulation and Consent Order between the Board and Jordan Valley Water Conservancy District (**Board Action Item**).

VIII. Low-Level Radioactive Waste Section..... Tab 6

- A. EnergySolutions’ request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to treat waste contaminated with dioxins and furans by macroencapsulation rather than by chemical means (**Board Action Item**).

IX. EnergySolutions’ request for an exemption from R313-25-9(5) of the Utah Administrative Code. (Informational Item Only)

- A. EnergySolutions presentation ..... Tab 7
- B. Heal Utah presentation in response to EnergySolutions’ request for an exemption from R313-25-9(5) of the Utah Administrative Code.

X. Other Business.

- A. Misc. Information Items.
- B. Scheduling of next Board meeting.

XI. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Kimberly Diamond-Smith, Office of Human Resources at (801) 536-4285, Telecommunications Relay Service 711, or by email at “[kdiamondsmith@utah.gov](mailto:kdiamondsmith@utah.gov)”.

Waste Management and Radiation Control Board Meeting  
Utah Department of Environmental Quality  
195 North 1950 West (Conference Room #1015) SLC, Utah  
July 12, 2018  
1:30 p.m.

**Board Members Present:** Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Marc Franc Alan Matheson, Steve McIff, Nathan Rich, Vern Rogers and Shane Whitney

**Board Members Absent:** Richard Codell, Danielle Endres, Jeremy Hawk and Shawn Milne

**Staff Members Present:** Scott Anderson, Brent Everett, Thomas Ball, Therron Blatter, Tim Butler, Gwyn Galloway, Arlene Lovato, Rusty Lundberg, Kacie McNeil, Deborah Ng, Bret Randall, Elisa Smith, Don Verbica, Raymond Wixom

**Others Present:** Linda Tibrect, Mario Bettolo, Tim Orton, Dwayne Woolley

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Jeremy Hawk and Shawn Milne were excused from the meeting. Dwayne Woolley, former Board member, was recognized.

II. Approval of the Meeting Minutes for the May 10, 2018 Board meeting (Board Action Item).

It was moved by Shane Whitney and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the May 10, 2018 Board Meeting minutes.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation, informed the Board that the asset balance of the Petroleum Storage Tank (PST) Trust Fund at the end of May 2018 was \$13,882,024.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of June 2018 is \$13,606,168.00. The PST Trust Fund is managed on a cash balance basis and is watched closely to ensure sufficient coverage for covered releases.

IV. Administrative Rules.

A. Approval of final adoption of changes to Radiation Control Rules R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials, to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (Board Action Item).

Rusty Lundberg, Deputy Director of the Division of Waste Management and Radiation, reviewed the request for the Board to approve for final adoption changes to R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, of the radiation control rules to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission (NRC) and published in the Federal Register on September 30, 2014 (79 FR 58664) and August 3, 2015 (80 FR 45841).

At the April 12, 2018 Board meeting, the Board approved the proposed changes to R313-37 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin.

The proposed changes were published in the May 1, 2018 issue of the Bulletin (Vol. 2018, No. 9). The pertinent pages of this issue of the *Bulletin* were provided in the July 12, 2018 Board packet.

A public comment period began on May 1, 2018 and concluded on June 1, 2018. No comments were received by the Division.

On September 30, 2014, the NRC amended the federal radioactive materials regulations to address security-related information requirements for large irradiators and manufacturers, distributors, transporters of category 1 and category 2 quantities of radioactive materials. On August 3, 2015, the NRC made various technical corrections to the federal radioactive materials regulations, including a correction to a reference in the federal regulations for the physical protection of category 1 and category 2 quantities of radioactive materials. However, based on the compatibility designations, the majority of NRC's revisions are not required for Utah, as an Agreement State, to adopt. Because R313-37 incorporates by reference 10 CFR Part 37, updating the date of the incorporation by reference from 2014 to 2017 results in incorporating the changes published by the NRC on September 30, 2014 and August 3, 2015. Consequently, only the change to the date of the incorporation by reference in R313-37-3 is necessary in order to maintain regulatory compatibility with NRC rules as an Agreement State with the NRC.

The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain primacy of the radioactive materials program from the federal government and under Subsection 19-6-104(1) to make rules necessary to implement the Radiation Control Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.

The Board's approval is needed for final adoption of the rule changes to R313-37, as published in the May 1, 2018 issue of the Utah State Bulletin and to set an effective date of July 13, 2018. The Director recommended that the Board approve final adoption of the rule change to R313-37, as published in the May 1, 2018 issue of the Utah State Bulletin and set an effective date of July 13, 2018.

**It was moved by Vern Rogers and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve for final adoption rule changes to Radiation Control Rules R313-37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials, to incorporate federal regulatory changes promulgated by the Nuclear Regulatory Commission, as published in the May 1, 2018 issue of the Utah State Bulletin with an effective date of July 13, 2018.**

B. Approval to proceed with formal rulemaking and public comment on proposed changes to the Used Oil Rules R315-15-16, Grants, to provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes (Board Action Item).

Rusty Lundberg and Deborah Ng, Hazardous Waste Section Manager, reviewed the request for the Board to initiate formal rulemaking and receive public comment on proposed changes to R315-15-16, Grants, of the Used Oil Rules.

Section R315-15-16 implements the provisions of Section 19-6-720 of the Used Oil Management Act regarding used oil grants that are used for establishing and supporting do-it-yourselfer (DIYer) used oil collection centers. The proposed changes to the used oil grant section provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes. The proposed changes result in greater alignment between the rules and the actual grant application package and implementation procedures and process.

Additionally, in January, 2018, the Division provided the Legislature's Administrative Rules Review Committee with a draft of the proposed changes in response to the Committee's action that rulemaking be undertaken to fully address the used oil grant application and reimbursement processes for DIYer used oil

collection centers. In Subsection 16.1, the list of authorized uses of the grant funds is expanded to match the list in 19-6-720 of the Used Oil Management Act.

The following ten, new subsections are proposed to be added: 16.4 Used Oil Transportation Costs from Used Oil Collection Centers – specifies the requirements to qualify for reimbursement of transportation costs from certain DIYer used oil collection centers from rural locations; 16.5 Funding – matching funds from grant applicants are not required, stipulates certain grant funding actions by the Director, requires submittal of bids to be paid by grant; 16.6 Application Contents – describes the content of the grant application form; 16.7 Application Submission –requires submittal of an original grant application to the Director; 16.8 Audit Requirements – grant recipients may be subject to a desk or field audit, requires grant recipient to maintain records and documents associated with grant expenditures; 16.9 Administrative Procedures – requires submittal of a final report and identifies the report contents; 16.10 Failure to Comply – describes actions the Director may take if the grantee fails to comply with grant agreement; 16.11 Grant Payments – specifies grant payment submittals and procedures; 16.12 Release of Funds – specifies Director actions to approve grant payments and forward to the Division of Finance; and 16.13 Grant Closeout – specifies requirements for grant closeout by the Director and for grantee record retention and availability.

The summary, the Draft rule analysis form and the Proposed rule changes to R315-15-16 were provided in the Board's July 12, 2018 Board packet.

The Board is authorized under Subsection 19-6-704 to make rules necessary to implement the Used Oil Management Act. The proposed rule changes also meet existing DEQ and state rulemaking procedures.

Board action is required to publish the proposed rule changes in the Utah State Bulletin and start a 30-day public comment period. The Director recommended that the Board authorize the publication of the proposed used oil rule changes in the Utah State Bulletin and commence a 30-day public comment period. With the Board's approval, it is anticipated that the proposed rule changes will be published in the August 1, 2018 issue of the Utah State Bulletin with the public comment period beginning on August 1, 2018 and ending on August 31, 2018.

Dennis Riding asked if the grant application process has changed since its inception. Ms. Ng stated that the number of applicants increased as oil prices went down. At that time, the smaller used oil collection centers sought grant money for transportation costs.

Nathan Rich asked if the new rules being proposed have any additional requirements, specifically in terms of review and fund disbursements. Ms. Ng explained that the change only clarifies how used oil collection centers can get their transportation costs reimbursed.

Mr. Lundberg further clarified that this rule change is to help subsidize the rural areas that have used oil collection centers to transport their oil to the recycling centers to complete the process, etc. This rule addresses the need for the reimbursement grants to help the rural areas of the state to not only collect used oil but move it to recycling facilities.

**It was moved by Mark Franc and seconded by Steve McIff and UNANIMOUSLY CARRIED to approval to proceed with formal rulemaking and public comment on proposed changes to the Used Oil Rules R315-15-16, Grants.**

- C. Approval to proceed with formal rulemaking and public comment on proposed changes to the Hazardous Waste Rules R315-260, Hazardous Waste Management System, and R315-261, General Requirements – Identification and Listing of Hazardous Waste, to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664) (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager, reviewed the request for the Board to approve to proceed with formal rulemaking and public comment by filing with the Office of Administrative Rules and publishing in the Utah State Bulletin proposed changes to UAC R315-260 and R315-261 to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664).

In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The Board adopted these rules in January of 2016. The federal rules were challenged in court and the United States Court of Appeals for the District of Columbia Circuit issued orders on July 7, 2017 and March 6, 2018 vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. The proposed changes to UAC R315-260 and R315-261 were provided in the July 12, 2018 Board packet.

The Board is authorized under Subsection 19-6-105(1)(c) to make rules governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage and disposal facilities. The Board is authorized under Subsection 19-6-104(3)(d) to meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste. The rule changes also meet existing DEQ and state rulemaking procedures.

The Director recommended the Board approve for formal rulemaking and public comment by publishing in the August 1, 2018 *Utah State Bulletin* the proposed changes to UAC R315-260 and R315-261. The 30-day public comment period will begin on August 1, 2018 and end on August 30, 2018.

**It was moved by Steve McIff and seconded by Nathan Rich and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and public comment on proposed changes to the Hazardous Waste Rules R315-260, Hazardous Waste Management System, and R315-261, General Requirements – Identification and Listing of Hazardous Waste, to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664).**

V. Radioactive Materials.

- A. Approval of the University of Utah (Radioactive Materials License Number UT 1800001) exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b) (Board Action Item).

Gwyn Galloway, Environmental Scientist, UMILL/RAM Section, reviewed the request from the University of Utah (U of U) for an exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b) of the Utah Administrative Code.

In 1993, the U of U wrote to the U.S. Department of Transportation (DOT) requesting an exemption from DOT requirements to move a device containing radioactive materials from one building on campus to another campus building. The DOT responded that hazardous materials transported by a state agency which are packaged and handled solely by state employees and transported in state owned and operated vehicles were not considered to be in commerce and were therefore excepted from the Hazardous Materials Transportation Act and the Hazardous Materials Regulations [DOT Requirements] developed under the Act. Therefore, the U of U did not need an exemption to transport the radioactive material as requested. This DOT interpretation of 49 CFR 171.1(d)(5) has been applied by university personnel at various universities across the nation for a number of years.

On June 1, 2018, the U.S. Nuclear Regulatory Commission (NRC) sent a communication to the Agreement States to clarify the applicability of the DOT requirements found in Title 49 of the Code of Federal Regulations (CFR) to the transportation of radioactive materials and when licensees would need to request an exemption from the NRC's transportation requirements found in 10 CFR Part 71. (A copy of the June 1, 2018 letter from the NRC was provided in the July 12, 2018 Board packet.)

The communication explained that, during an inspection at a State university, an inspector was informed by university personnel that the DOT requirements did not apply to the transportation of radioactive materials as described above since the materials were not considered to be "in commerce" and were excepted by 49CFR 171.1(d)(5). Under the NRC's authority, the requirements of 10 CFR 71.5(b) were promulgated to ensure that licensees transporting radioactive materials comply with the applicable portions of DOT regulations even when those shipments do not enter into commerce and therefore are not subject to DOT requirements. Pursuant to 10 CFR 71.5(b), all radioactive materials transported by State personnel in State owned and operated vehicles would be required to comply with the DOT requirements even though the radioactive materials are not considered to be in commerce. All Agreement States are required to adopt and implement requirements that are essentially identical to the requirements found in 10 CFR 71.5(b) in order to maintain compatibility with NRC Program requirements. The State of Utah adopted requirements that are essentially identical to 10 CFR 71.5(b) in Utah Administrative Code (UAC) R313-19-100(5)(b).

When the Radiation Safety Officer (RSO) at the U of U read the June 1, 2018 communication from the NRC, he realized that the U of U had been following the DOT's interpretation and were treating shipments that were not in commerce as excepted from the requirements, but they did not have an exemption to 10 CFR 71.5(b) or Utah's equivalent requirement, UAC R313-19-100(5)(b).

The U of U's RSO immediately contacted the Division to verify that he had correctly interpreted the communication. When the Division agreed that the RSO had correctly determined that the U of U was operating in accordance with DOT requirements but not with the requirements of the NRC, the RSO sent a request to the Director for an exemption to the requirements in 10 CFR 71.5(b) [R313-19-100(5)(b)]. (A copy of the U of U letter dated Jun 14, 2018, requesting an exemption from R313-19-100(5)(b) was provided in the July 12, 2018 Board packet.)

As discussed with the RSO, the exemption would only apply to the radioactive materials which are packaged and handled solely by state employees and transported in state owned and operated vehicles and are not considered to be in commerce. Specifically, this exemption would apply only to on-campus transportation.

The Director recommends that the Board approve this exemption because it will typically apply to only very small quantities of radioactive materials that are transported by U of U personnel in State owned and operated vehicles on local roadways and poses no undue hazard to the public or the environment.

Dennis Riding asked if other universities in other states have the same issue and how have they been resolved. Ms. Galloway stated that other universities within the state may have the same issue. However, they have not asked for an exemption. This issue was initially discovered in another state and it is anticipated that it was handled through an exemption request as well.

Nathan Rich asked if this is a blanket exemption or are there some limits or restrictions. Ms. Galloway stated the exemption could be written to identify any/all restrictions the Board desires.

Mark Franc stated that the information provided with the exemption request referred to "typical" small quantities but did not address atypical situations of increased hazard such as a traffic accident or material falling off the truck in transit. Mr. Franc also asked if there would be a way for the general public to know of the hazards associated the material if an incident were to occur.

Mario Bettolo, representing the University of Utah, explained that this exemption would only apply to material that is not in commerce. Specifically, this exemption would be for moving material from a small research lab on campus to the waste building. The material will be double-bagged, tagged and transported approximately a half a mile. If material is shipped off campus or is going to other locations, the DOT rules would be implemented.

Mr. Franc asked if this exemption would apply to anything other than small quantities. Mr. Bettolo stated this exemption is for only small quantities and he would not object to having the word “typically” removed from the exemption request.

Shane Whitney requested clarification on how the material will be transported on campus. Mr. Bettolo explained that a waste truck is utilized to transport the materials and is only used on campus. Mr. Bettolo clarified the U of U did not receive an exemption in 1993; it received a letter from the DOT indicating their practices were acceptable to the DOT.

Mr. Rich asked what requirements the U of U would be subject to if this exemption was not in place. Ms. Galloway stated the U of U would be subject to the requirements of R313-19 100(5) regarding packaging, labeling, marking, etc. Mr. Bettolo stated the time to package, label and mark the material would be significant (adding hours to each shipment) if this exemption was not granted. Without the exemption, the U of U would be required to package all the material as if it were shipping the material out of state rather than transporting it to the waste building where it is re-packaged, sorted and labeled.

It was moved by Dennis Riding and seconded by Vern Rogers and unanimously carried to approve the University of Utah’s (Radioactive Materials License Number UT 1800001) exemption from the requirements in 10 CFR 71.5(b) which are equivalent to the requirements found in R313-19-100(5)(b); Motion was amended to include removing the word “typically” and limiting it to the University of Utah campus only.

## VI. Low-Level Radioactive Waste.

- A. EnergySolutions’ request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to treat waste contaminated with dioxins and furans by macroencapsulation rather than by chemical means (Information Item Only).

Don Verbica, Low-Level Radioactive Waste Section Manager, reviewed EnergySolutions’ request submitted on June 27, 2018, for a one-time site-specific treatment variance from the Utah Administrative Code (Hazardous Waste Management Rules).

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on July 10, 2018. The comment period began July 10, 2018, and was scheduled to end August 8, 2018. Due to an error, a corrected notice of public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on July 17, 2018. The comment period began July 17, 2018 and ended on August 16, 2018. No comments were received.

Tim Orton, from EnergySolutions, explained the company’s proposal to receive up to 100 tons of ash contaminated with metals at varying levels with dioxins and furans as underlying hazardous constituents. If, upon receipt, this waste meets land disposal restrictions for characteristic metals, the waste may be directly disposed in the low-level radioactive waste embankment regardless of dioxin and furan concentrations. However, if the facility is required to treat the waste for metals to meet the land disposal restrictions for characteristic metals, then it is also required to treat the dioxins and furans as underlying hazardous constituents. EnergySolutions proposes to receive this waste and treat it to meet land disposal restriction standards for the hazardous metals, if necessary.



EnergySolutions is asking to be relieved of the requirement for treating the dioxins and furans. In order to ensure that this treatment is protective to the environment, EnergySolutions proposes to macroencapsulate the waste for disposal in the mixed waste landfill cell.

This request is based on the fact that treatment of the dioxin and furan contaminants is contingent only upon the hazardous metal levels. The proposed treatment will include further encapsulating the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching.

Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268.44 of the Utah Administrative Code. The variance will be valid for one year only.

This is an informational item before the Board. The Director will provide a recommendation at the next Board meeting.

VII. Director's Report.

Scott Anderson provided a Director's report (attached). On behalf of the Division, Mr. Anderson expressed appreciation to the Board for its support of the Division's rulemaking activities. Rulemaking is important to the Division in the waste program as it helps maintain primacy and in the radiation control program as it helps maintains agreement state status.

VIII. Other Business.

- A. Misc. Information Items. – None to report.
- B. Scheduling of next Board meeting.

The August 9, 2018 Board meeting was canceled. The next Board meeting is scheduled for September 13, 2018 at 1:30 pm at the Utah Department of Environmental Quality, 195 North 1950 West, (Conference Room #1015), SLC, Utah.

IX. Adjourn.

The meeting adjourned at 2:15 p.m.

# WASTE MANAGEMENT AND RADIATION CONTROL BOARD

## Director's Report

July 12, 2018

1. HB 373
  - a. Effective July 1, 2018
  - b. Technology options being evaluated.
  - c. Self-inspection rules drafted.
  - d. Anticipate rulemaking September 2018.
  
2. Solid Waste fees.
  - a. New fee approved in 2018 General Session (21 cents/ton for treatment, disposal, 11 cents/ton for transfer).
  - b. Current fee (and those paying) remains in place through December 2018.
  - c. New fee effective January 1, 2019.
  - d. Fee for FY 2020 budget developed July/August 2018.
  
3. Sunset Reviews
  - a. Used Oil Management Act.
  - b. Solid and Hazardous Waste Act.

Waste Management and Radiation Control Board Meeting  
Emergency Electronic/Telephonic Meeting  
Anchor Location: Utah Department of Environmental Quality  
195 North 1950 West (Red Rocks Conference Room #3132), SLC  
August 30, 2018  
10:00 a.m.

**Board Members**

**Participating By Phone:** Richard Codell, Danielle Endres, Mark Franc, Alan Matheson, Shawn Milne, Nathan Rich, and Dennis Riding (Vice-Chair)

**Board Members Present  
at Anchor Location:**

Brett Mickelson (Chair), Vern Rogers and Shane Whitney

**Board Members**

**Excused/Absent:** Jeremy Hawk and Steve McIff

**Staff Members Present:**

Scott Anderson, Brent Everett, Thomas Ball, Eric Boone, Jule Fausto, Arlene Lovato, Rusty Lundberg, Deborah Ng, Christine Osborne, Don Verbica, Otis Willoughby, Raymond Wixom

**Other Phone Call**

**Participants:** None

**Others Present at**

**Anchor Location:** Jeff Havlicak, Grace Olscamp, Frank Pignanelli, Jessica Reimer, Mark Walker

I. Call to Order.

Brett Mickelson (Chair) called the meeting to order at 10:00 a.m.; roll call was conducted (see above).

II. Request from EnergySolutions for an exemption from R313-25-9(5) of the Utah Administrative Code (Board Action Item).

Scott Anderson reviewed the request from EnergySolutions for an exemption from R313-25-9(5)(a) of the Utah Administrative Code (UAC). The letter from EnergySolutions requesting the exemption was previously provided to the Board in an email on August 28, 2018.

UAC R313-25-9(5)(a) limits the amount of depleted uranium that EnergySolutions can receive to one metric ton total accumulation unless a performance assessment is conducted. Rather than conduct the performance assessment, EnergySolutions seeks an exemption from this requirement as provided in UAC R313-12-55(1). EnergySolutions also requested that the exemption request be released for public comment for a period of 30 days, beginning on or before September 6, 2018.

Mr. Anderson explained that, in matters of significant public interest before him as Division Director, he has the discretion to initiate public comment on his own. In matters before the Board of significant public interest, which this is, he needs Board approval to initiate public comment. Therefore, the purpose of this meeting is to formally direct Mr. Anderson to solicit public comment on the exemption request, if the Board chooses to do so. Because EnergySolutions requested that the public comment period start before the Board's normally scheduled meeting of September 13, 2018, the emergency Board meeting was necessary.

Mr. Anderson also explained that the purpose of the emergency meeting is not to discuss the merits of EnergySolutions' exemption request. A formal presentation will be made by EnergySolutions in the September 13, 2018 Board meeting. The sole purpose of the meeting is to receive direction from the Board regarding the requested public comment period.

Mr. Anderson recommended that EnergySolutions' exemption request go out for public comment.

Richard Codell stated his support of a public comment period and felt the public needed adequate time to provide comments since this is such a controversial item.

Mark Franc also questioned whether 30 days was sufficient and asked if the Board could authorize additional time for public comment if an extension is requested.

Brett Mickelson clarified that whatever length of time the Board authorizes is the official time frame. If there is a request for additional time, the Board would have to reconvene to address the request or give Mr. Anderson the discretion to extend the public comment period.

Nathan Rich also spoke in favor a public comment period and was concerned that 30 days might not be enough time to receive comments. Mr. Rich was also concerned about the perception that the Board is trying to compress the schedule and thought it would be appropriate for EnergySolutions to clarify its urgency for the Board to address this matter in this manner.

Shawn Milne expressed his support for a public comment period but proposed a shorter period so the Board could review the comments at its next meeting. Mr. Milne also felt that any request for an extension of time needed to be legitimate and not just a delaying tactic.

Danielle Endres agreed with other Board members that a 30-day public comment period may not be enough time. She also stated she would not support a public comment period less than 30 days.

Vern Rogers provided information regarding the inquiry from the Department of Defense (DOD) for the possible management by EnergySolutions of depleted uranium metal penetrators currently being stored at the Tooele Army Depot and one other site. The time frame was set by the DOD due to its budgetary and scheduling restraints. Mr. Rogers felt that, based on the amount of the press this matter has received just in the 24 hours since this notice, the public does have the opportunity to be widely informed of this matter. EnergySolutions intends to have a full discussion during the September Board meeting and to be candid and to answer questions and to help the public feel certain and secure that this is a good opportunity to have EnergySolutions provide a solution to a Utah problem.

Mr. Anderson addressed Mr. Milne's proposal to review the public comments at the September Board meeting. Because the public comment period will still be open when the Board meets on September 13, 2018, it will not be possible to review the public comments in the September meeting.

Mr. Anderson further explained that there will likely be a request for an extension to the public comment period, given the interest in this issue. If that occurs, the Board would have to meet again to address the extension request or give Mr. Anderson the authority to extend the public comment period at his discretion if appropriate. This discretion could be provided in a Board motion.

Dennis Riding supported giving the Director the discretion to extend the public comment period if there is public interest.

Raymond Wixom, Attorney General's Office, acting as counsel to the Board, provided clarification that, under Utah Administrative Code R313-17-2(3), public comment periods must run at least 30 days. There is no discretion for a shorter period.

Brett Mickelson asked if any Board members wanted to recuse themselves from voting on this matter.

Vern Rogers recused himself from voting.

[Initial motion]

**It was motioned by Nathan Rich and seconded by Dennis Riding that the Director initiate a 30-day public comment period to begin September 6, 2018 regarding EnergySolutions' request for an exemption from R313-25-9(5) of the Utah Administrative Code and further that the Board give authorization and discretion to the Director to extend the comment period for an additional 30 days if he receives a substantive request, that in his opinion, would merit the extension.**

Mr. Milne asked if the motion could include language that any request for an extension be adequately supported.

Mr. Rich was open to other language in the motion. His intent was to give Mr. Anderson the ability to evaluate any requests for extension and decide if the request had merit or was simply a stalling tactic.

With that explanation, Mr. Milne was comfortable with the motion.

Mr. Franc suggested that the Board give discretion to the Director to determine the appropriate length of any extension based on the merit of the request, rather than specifying an additional 30 days.

In response to a question from Nathan Rich, Mr. Anderson stated he is comfortable with that flexibility.

It was proposed that the motion be amended to include language that any extension to the public comment period "not exceed an additional 30 days without another Board meeting."

**It was motioned by Nathan Rich and seconded by Dennis Riding and UNANIMOUSLY CARRIED that the Director initiate a 30-day public comment period to begin September 6, 2018 regarding EnergySolutions' request for an exemption from R313-25-9(5) of the Utah Administrative Code and that the Board give authorization and discretion to the Director to extend the public comment period and set the length of the extension based on the merit of the request, not to exceed an additional 30 days, without another Board meeting.**

The next Board meeting is scheduled for September 13, 2018.

III. Adjourn.

The meeting adjourned at 10:25 a.m.

**UST STATISTICAL SUMMARY**  
**August 1, 2017 -- July 31, 2018**

<b>PROGRAM</b>													
	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>(+/-) OR Total</b>
<b>Regulated Tanks</b>	4,059	4,063	4,062	4,050	4,054	4,047	4,055	4,061	4,064	4,066	4,061	4,058	<b>(1)</b>
<b>Tanks with Certificate of Compliance</b>	3,959	3,953	3,954	3,957	3,969	3,968	3,969	3,968	3,976	3,976	3,982	3,986	<b>27</b>
<b>Tanks without COC</b>	100	110	108	93	85	79	86	93	88	90	79	72	<b>(28)</b>
<b>Cumulative Facilities with Registered A Operators</b>	1,301	1,300	1,307	1,305	1,306	1,304	1,307	1,307	1,305	1,264	1,261	1,296	<b>97.52%</b>
<b>Cumulative Facilities with Registered B Operators</b>	1,316	1,302	1,307	1,305	1,306	1,305	1,308	1,308	1,306	1,306	1,303	1,301	<b>97.89%</b>
<b>New LUST Sites</b>	7	3	6	13	8	10	6	8	1	7	6	15	<b>90</b>
<b>Closed LUST Sites</b>	10	4	3	18	13	11	15	8	5	13	5	15	<b>120</b>
<b>Cumulative Closed LUST Sites</b>	5031	5036	5045	5060	5072	5087	5100	5106	5110	5125	5131	5146	<b>115</b>
<b>FINANCIAL</b>													
	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>(+/-)</b>
<b>Tanks on PST Fund</b>	2,728	2,722	2,718	2,708	2,707	2,708	2,708	2,706	2,705	2,698	2,704	2,704	<b>(24)</b>
<b>PST Claims (Cumulative)</b>	670	671	674	674	676	677	680	686	687	686	687	688	<b>18</b>
<b>Equity Balance</b>	-\$8,817,188	-\$9,466,602	-\$12,442,135	-\$13,385,166	-\$13,951,499	-\$14,290,860	-\$14,288,779	-\$13,656,255	-\$14,076,436	-\$14,562,872	-\$14,838,728	-\$14,804,732	<b>(\$5,987,544)</b>
<b>Cash Balance</b>	\$15,991,466	\$15,342,052	\$16,002,761	\$15,059,729	\$14,493,396	\$14,154,036	\$14,156,117	\$14,788,641	\$14,368,460	\$13,882,024	\$13,606,168	\$13,640,164	<b>(\$2,351,302)</b>
<b>Loans</b>	0	0	0	0	0	0	0	0	0	1	0	0	<b>0</b>
<b>Cumulative Loans</b>	112	112	112	112	112	112	112	112	112	113	113	113	<b>1</b>
<b>Cumulative Amount</b>	\$4,079,887	\$4,079,887	\$4,079,887	\$4,079,887	\$4,079,887	\$4,079,887	\$4,079,887	\$4,079,887	\$4,079,887	\$4,229,887	\$4,229,887	\$4,229,887	<b>\$150,000</b>
<b>Defaults/Amount</b>	0	0	0	0	0	1	1	1	1	1	1	1	<b>1</b>
	<b>August</b>	<b>September</b>	<b>October</b>	<b>November</b>	<b>December</b>	<b>January</b>	<b>February</b>	<b>March</b>	<b>April</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>TOTAL</b>
<b>Speed Memos</b>	20	34	54	33	18	12	22	17	28	51	31	16	<b>336</b>
<b>Compliance Letters</b>	2	2	1	8	6	4	4	6	1	1	7	3	<b>45</b>
<b>Notice of Intent to Revoke</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>Orders</b>	0	0	1	2	0	0	0	0	1	0	0	0	<b>4</b>

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD  
EXECUTIVE SUMMARY  
FINAL ADOPTION OF AMENDMENTS TO USED OIL RULES  
R315-15-16, Grants  
September 13, 2018**

<b>What is the issue before the Board?</b>	Board approval of final adoption of changes to R315-15-16, <i>Grants</i> , of the used oil rules.
<b>What is the historical background or context for this issue?</b>	<p>At the Board meeting on July 12, 2018, the Board approved the proposed changes to R315-15-16 to be filed with the Office of Administrative Rules for publication in the <i>Utah State Bulletin</i>. The proposed changes were published in the August 1, 2018 issue of the <i>Bulletin</i> (Vol. 2018, No. 15). The pertinent pages of this issue of the <i>Bulletin</i> follow this Executive Summary.</p> <p>Section R315-15-16 of the used oil rules implements the provisions of Section 19-6-720 of the Used Oil Management Act regarding used oil grants that are used for establishing and supporting do-it-yourselfer (DIYer) used oil collection centers. The changes to the grant section of the used oil rules provide additional clarity and more detailed direction to the grant application, issuance, implementation and reimbursement processes. The changes also result in greater alignment between the rules and the actual grant application package and implementation procedures and process.</p>
<b>What is the governing statutory or regulatory citation?</b>	The Board is authorized under Subsection 19-6-704 to make rules to implement the Used Oil Management Act. The rule changes also meet existing DEQ and state rulemaking procedures.
<b>Is Board action required?</b>	Yes. Board action is needed for final adoption of the rule changes to R315-15-16, as published in the August 1, 2018 issue of the <i>Utah State Bulletin</i> and set an effective date of September 14, 2018.
<b>What is the Division Director's recommendation?</b>	The Director recommends that the Board approve final adoption of the rule changes to R315-15-16, as published in the August 1, 2018 issue of the <i>Utah State Bulletin</i> and set an effective date of September 14, 2018.
<b>Where can more information be obtained?</b>	For questions or additional information, please contact Rusty Lundberg (801-536-4257, <a href="mailto:rlundberg@utah.gov">rlundberg@utah.gov</a> ) or Tom Ball (801-536-0251, <a href="mailto:tball@utah.gov">tball@utah.gov</a> ).

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed July 03, 2018, 12:00 a.m. through July 16, 2018, 11:59 p.m.

Number 2018-15  
August 01, 2018

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.



Office of Administrative Rules, Salt Lake City 84114

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# TABLE OF CONTENTS

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<b>SPECIAL NOTICES</b> .....	<b>1</b>
Commerce	
Occupational and Professional Licensing	
Proposed Building Codes and Amendments Under the Utah Uniform	
Building Standards Act.....	1
<b>EXECUTIVE DOCUMENTS</b> .....	<b>49</b>
Governor	
Administration	
Calling the Sixty-Second Legislature Into the Second Special Session,	
Utah Proclamation No. 2018-2S.....	49
<b>NOTICES OF PROPOSED RULES</b> .....	<b>51</b>
Attorney General	
Administration	
No. 43075 (Amendment): R105-2 Records Access and Management.....	52
Commerce	
Occupational and Professional Licensing	
No. 43092 (Amendment): R156-9 Funeral Service Licensing Act Rule.....	53
Environmental Quality	
<b>Waste Management and Radiation Control, Waste Management</b>	
No. 43081 (Amendment): R315-15-16 Grants.....	57
No. 43079 (Amendment): R315-260 Hazardous Waste Management	
System.....	61
No. 43080 (Amendment): R315-261 General Requirements -- Identification	
and Listing of Hazardous Waste.....	65
Health	
Disease Control and Prevention, Environmental Services	
No. 43076 (Repeal and Reenact): R392-301 Recreational Vehicle Park	
Sanitation.....	84
UTech Board of Trustees	
Administration	
No. 43093 (New Rule): R945-1 UTech Scholarship.....	92
Workforce Services	
Employment Development	
No. 43086 (Amendment): R986-700-779 Educational Improvement	
Opportunities Outside of the Regular School Day Grant Program.....	95
<b>FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION</b> .....	<b>99</b>
Administrative Services	
Administration	
No. 43059: R13-1 Public Petitions for Declaratory Orders.....	99
Facilities Construction and Management	
No. 43069: R23-30 State Facility Energy Efficiency Fund.....	99
Alcoholic Beverage Control	
Administration	
No. 43057: R81-4C Limited Restaurant Licenses.....	100
No. 43058: R81-4D On-Premise Banquet License.....	101
Education	
Administration	
No. 43082: R277-470 Charter Schools - General Provisions.....	101
No. 43083: R277-481 Charter School Oversight, Monitoring and Appeals.....	102
No. 43084: R277-492 Utah Science Technology and Research Initiative	
(USTAR) Centers Program.....	102
No. 43085: R277-619 Student Leadership Skills Development.....	103

TABLE OF CONTENTS

---

Health	
Disease Control and Prevention, Environmental Services	
No. 43077: R392-103 Food Handler Training and Certificate.....	103
Insurance	
Administration	
No. 43067: R590-186 Bail Bond Surety Business.....	104
Title and Escrow Commission	
No. 43068: R592-10 Title Insurance Regulation Assessment for Agency	
Title Insurance Producers and Title Insurers.....	105
Public Service Commission	
Administration	
No. 43056: R746-344 Filing Requirements for Telephone Corporations with	
Less Than 5,000 Access Line Subscribers.....	105
No. 43087: R746-345 Pole Attachments.....	106
No. 43088: R746-404 Regulation of Promotional Programs of Electric and	
Gas Public Utilities.....	106
No. 43089: R746-406 Advertising by Electric and Gas Utilities.....	107
No. 43090: R746-500 Americans With Disabilities Act Complaint Procedure.....	107
No. 43091: R746-600 Postretirement Benefits other than Pensions.....	108
<b>NOTICES FIVE-YEAR REVIEW EXTENSION.....</b>	<b>109</b>
Health	
Disease Control and Prevention, Laboratory Services	
No. 43078: R438-13 Rules for the Certification of Institutions to Obtain	
Impounded Animals in the State of Utah.....	109
<b>NOTICES OF RULE EFFECTIVE DATES.....</b>	<b>111</b>
<b>RULES INDEX</b>	
<b>BY AGENCY (CODE NUMBER)</b>	
<b>AND</b>	
<b>BY KEYWORD (SUBJECT).....</b>	<b>113</b>

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**Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
R315-15-16  
Grants**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 43081  
FILED: 07/13/2018

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R315-15-16 implements the provisions of Section 19-6-720 of the Used Oil Management Act regarding used oil grants that are used for establishing and supporting do-it-yourselfer (DIYer) used oil collection centers. These proposed changes to the used oil grant section of the used oil rule provide additional clarity and more detailed direction to the grant application, issuance, implementation, and reimbursement processes. These proposed changes result in greater alignment between the rule and the actual grant application package and implementation procedures and processes. Additionally, in January 2018, the Division of Waste Management and Radiation Control, Waste Management and Radiation Control, Waste Management Review Committee provided the Administrative Rules Review Committee with a draft of the proposed changes in response to the Committee's action that rulemaking be undertaken to fully address the used oil grant application and reimbursement processes for DIYer used oil collection centers. On 07/12/2018, the Waste Management and Radiation Control Board approved the proposed changes to Section R313-15-16 for filing and publication in the Utah State Bulletin for public review and comment.

SUMMARY OF THE RULE OR CHANGE: In Subsection R315-15-16(16.1), the list of authorized uses of the grant funds is expanded to match the list in Section 19-6-720 of the Used Oil Management Act. The following ten new subsections are proposed to be added: Subsection R315-15-16(16.4) specifies the requirements to qualify for reimbursement of transportation costs from certain DIYer used oil collection centers from rural locations; Subsection R315-15-16(16.5) states matching funds from grant applicants are not required, stipulates certain grant funding actions by the Director, and requires submittal of bids to be paid by grant; Subsection R315-15-16(16.6) describes the content of the grant application form; Subsection R315-15-16(16.7) requires submittal of an original grant application to the Director; Subsection R315-15-16(16.8) states grant

recipients may be subject to a desk or field audit, and requires grant recipient to maintain records and documents associated with grant expenditures; Subsection R315-15-16(16.9) requires submittal of a final report and identifies the report contents; Subsection R315-15-16(16.10) describes actions the Director may take if the grantee fails to comply with the grant requirements; Subsection R315-15-16(16.11) specifies grant payment submittals and procedures; Subsection R315-15-16(16.12) specifies Director actions to approve grant payments and forward to the Division of Finance; and Subsection R315-15-16(16.13) specifies requirements for grant closeout by the Director and for grantee record retention and availability.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-704 and Section 19-6-720

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Grants are paid from the Used Oil Collection Administration Account established in Section 19-6-719 of the Used Oil Management Act. A used oil collection center grant can vary since the amount of the grant is based on an individual grantee's application, and the nature and scope of the specific project(s). Because of the variability in a given grant request, total costs cannot be quantified, but past grants to entities funded from the state budget, such as higher education institutions and school districts, have ranged from \$500 to \$3,000.

◆ **LOCAL GOVERNMENTS:** Local health departments and some local school districts have received several grants in the past that have ranged from \$500 to \$3,000. Because of the variability in a given grant request, total costs cannot be quantified.

◆ **SMALL BUSINESSES:** Small businesses that serve as a used oil collection can apply for a grant and in the past have received grants that have ranged from \$500 to \$3,000. Because of the variability in a given grant request, total costs cannot be quantified.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Big box retailers that typically provide auto maintenance services to the public and serve as a used oil collection center can apply for a grant. Although none have applied for a grant in the past, it is assumed they could receive a grant within the same range as other previous grant recipients (i.e., from \$500 to \$3,000). Because of the variability in a given grant request, total costs cannot be quantified.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because grants are voluntary there are no actual compliance costs, nor does a grant require matching funds. However, other funds may be used in combination with the grant in order to expand the proposed grant-related project. Any costs incurred by a grantee are typically associated with the application preparation, grant expenditure verification, and completion report and vary based on the specific grant activity.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** A critical component of a successful used oil recycling program is establishing collection centers convenient to the public, particularly for a DIYer who changes their own oil from personal vehicles or home equipment. This is especially true for rural areas of Utah. In support of establishing DIYer used oil collection centers, businesses and governmental entities can apply for a grant. In the past, grants have ranged from \$500 to \$3,000. Because grants are voluntary there are no compliance costs. Additionally, grants do not require matching funds, any costs incurred by a grantee are typically associated with the application preparation, grant expenditure verification, and completion report and vary based on the specific grant activity.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ENVIRONMENTAL QUALITY  
WASTE MANAGEMENT AND RADIATION  
CONTROL, WASTE MANAGEMENT  
SECOND FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3097  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)
- ◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at [tball@utah.gov](mailto:tball@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 09/14/2018**

**AUTHORIZED BY:** Scott Anderson, Director

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0

<b>Total Fiscal Costs:</b>	<b>\$500 to \$3,000 per grant</b>	<b>\$500 to \$3,000 per grant</b>	<b>\$500 to \$3,000 per grant</b>
<b>Fiscal Benefits</b>			
State Government	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant
Local Government	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant
Small Businesses	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant
Non-Small Businesses	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant	\$500 to \$3,000 per grant
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$1,500 to \$9,000 per grant</b>	<b>\$1,500 to \$9,000 per grant</b>	<b>\$1,500 to \$9,000 per grant</b>
Net Fiscal Benefits:	\$1,000 to \$6,000 per grant	\$1,000 to \$6,000 per grant	\$1,000 to \$6,000 per grant

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

**Appendix 2: Regulatory Impact to Non-Small Businesses**  
 There is currently a single non-small company with an NAIC code of 452311 with multiple locations throughout the state that participates in the do-it-yourselfer (DIYer) used oil collection center program. This non-small business has not ever requested or applied for a used oil grant. Although they have not applied for a grant in the past, it is assumed they may choose to apply for and receive a grant within the same range as other previous grant recipients (i.e., from \$500 to \$3,000). Because of the variability of a given grant request, total costs are inestimable and therefore cannot be quantified.

The Executive Director of the Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-15. Standards for the Management of Used Oil.**

**R315-15-16. Grants.**

16.1 STATUTORY AUTHORITY.

Utah Code Annotated 19-6-720 authorizes the Division of Waste Management and Radiation Control to award grants, as funds are available, for the following:

(a) ~~Used oil collection centers;~~

(b) Used oil collection events;

(c) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs; and

(d) Public education programs and outreach.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Application Package, ~~published~~ made available by the Director, shall be completed and submitted to the Director for consideration.

16.3 LIMITATIONS.

(a) The grantee ~~must~~ shall commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

16.4 USED OIL TRANSPORTATION COSTS FROM USED OIL COLLECTION CENTERS

(a) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a used oil collection center (UOCC) located within a rural area that meets the following criteria:

(1) accepts only:

(i) DIYER used oil, Type A UOCC; or

(ii) both DIYER and farmer used oil, Type B UOCC

(2) is located in a Class 4 municipality, as described in Section 10-2-301, or in an area with a population less than that of a Class 4 municipality;

(3) stays active with the Used Oil Program for at least two years after receiving the grant or the grant funds shall be reimbursed;

(4) completes a grant application that is signed by the owner of the collection center; and

(5) obtains a minimum of one transportation bid from a permitted used oil transporter in accordance with Section R33-5-104.

(b) Grant funds may be used for costs for a permitted used oil transporter to collect and transport used oil from a Type C Used Oil Collection Center if the UOCC meets the following criteria:

(1) Is a Utah municipal landfill that is registered as a Type C used oil collection center with the Division of Waste Management and Radiation Control;

(2) Only allows small businesses that qualify as a Very Small Quantity Generator (VSOGs) of hazardous waste, to deliver used oil in a volume of less than 55 gallons per visit per day; and

(3) One transportation bid from a permitted used oil transporter is submitted for requests less than \$1,000.00, or three bids if over \$1,000.00.

(c) Grant funds may be considered for costs for a permitted used oil transporter to collect and transport used oil from a Used Oil Collection Center that does not meet the criteria outlined in Subsections R315-15-16.4(a) or (b) on a case-by-case basis.

#### 16.5 FUNDING

(a) An applicant is not required to provide matching funds.

(b) The Director may withhold 10 percent of the funds from a grant recipient until the grant is completed and the final documentation submitted.

(c) The Director may approve a request for advance payment based upon justification offered by the applicant.

(d) A grant application shall include all bids for expenses to be paid by the grant in accordance with Rule R33-5.

#### 16.6 APPLICATION CONTENTS

(a) A grant application form is part of the grant application package available from the Director and consists of the following sections:

(1) Applicant Information. The applicant shall include basic information regarding the applicant and the individual or entity responsible for the project implementation.

(2) Used Oil Project Request for Funding. The project funding request shall include the following:

(i) Background. The background information shall include a description of:

(A) The absence or existence of used oil collection opportunities in the area to be served by the used oil project; and

(B) The population of the proposed project area.

(ii) Project Description and Goals; and

(iii) Funding Sources.

(3) Project Budget. The project budget may include a cost breakdown of the following categories:

(i) Used oil transportation and disposal expenses.

(ii) Contractor or consultant expenses.

(iii) Construction expenses.

(iv) Equipment.

(v) Materials and supplies.

(vi) Public education and outreach.

(4) Eligibility summary. The applicant shall include, as applicable, the following information for each:

(i) Used oil collection center:

(A) Name of the facility;

(B) Physical address; and

(C) Phone number; and

(ii) Curbside collection program:

(A) Name, address, and phone number of the program operator;

(B) Number of residents served by the program; and

(C) Collection schedule

(5) Certification Statement and Signature.

#### 16.7 APPLICATION SUBMISSION

Applicants shall submit an original application using the application package of Subsection R315-15-16.2(b) to the Director.

#### 16.8 AUDIT REQUIREMENTS

(a) A grant may be subject to a desk or field audit.

(b) The grantee is responsible for maintaining source documents substantiating the expenditures claimed and shall make them available at the time of an audit.

(c) Records relating to the implemented program may include:

(1) Expenditure ledger;

(2) Paid warrants;

(3) Contracts;

(4) Change orders;

(5) Invoices; and

(6) Cancelled checks.

(c) Records shall be maintained for a period of three years from the date of final payment by the State.

#### 16.9 ADMINISTRATIVE PROCEDURES

(a) A grantee shall submit a final report within one month of completion of the project or by a later date specified by the Director. The report shall include the following information:

(1) A description of the completed used oil collection program, including any amendments;

(2) The estimated number of participants in the program;

(3) A description of the program's public education efforts;

(4) A description of measures taken to continue the program; and

(5) A complete and final itemization of how grant funds were expended.

#### 16.10 FAILURE TO COMPLY

Failure to comply with the agreement requirements may result in the Director terminating, suspending, or requiring the grantee to repay some or all of the grant.

#### 16.11 GRANT PAYMENTS

(a) General Requirements.

(1) The Director shall reimburse the grantee for performing only those services as specified in the grant application. Any deviations from the use of funds specified in the application shall be approved by the Director before an expenditure for that item is made.

(2) Payment shall be made to the grantee only. It shall be the responsibility of the grantee to pay all contractors and subcontractors for purchased goods and services.

(3) The Director may withhold and retain ten percent of the grant award until the grant is completed and the final documentation submitted.

(4) Requests for advance payment shall be submitted in writing to the Director and demonstrate that the grantee will incur a specific expenditure(s) prior to or shortly after payment for the State. Suggested documentation includes:

(i) Purchase orders; and

(ii) Invoices.

(5) The Director may partially or fully deny advance payment requests.

(b) Submittal of payment requests.

(1) All payment requests shall be submitted using the completed Payment Request Form of the grant application package of Subsection R315-15-16.2(b) and signed by the individual authorized in the grant application.

(2) Payment requests shall include an itemization of all expenses by budget expense type.

(3) Payment requests shall include copies of documents supporting the claimed expenses, such as bids, receipts, canceled checks, and sole source justifications. Supporting documents shall contain sufficient information to establish purchases made or costs incurred. At a minimum, the documentation should include the name, amount, and date of purchase for the expense.

(4) All payment requests shall be submitted to the Director.

#### 16.12 RELEASE OF FUNDS

(a) The Director shall review and approve all payment requests before payment is made. The grantee shall meet the following conditions before the Director shall process a payment request during the project term:

(1) The grantee has submitted any required project reports and the Director has deemed them to be satisfactory;

(2) The Director has received copies of applicable contracts and/or subcontracts; and

(3) The grantee has received applicable permits or permit waivers from governmental agencies and the Director has received copies of such documentation.

(b) After Director approval, payment requests shall be forwarded to the Division of Finance for issuance of pay warrants.

(c) If ten percent of the total grant was previously withheld, the Director shall release the remaining ten percent upon receipt and acceptance of the final report and final payment request.

#### 16.13 GRANT CLOSEOUT

(a) The Director shall close out the grant when it is determined that all applicable administrative actions and all required work of the grant have been completed.

(b) Upon receipt of the final report, the Director shall ensure all work has been completed and all unexpended funds are refunded to the State.

(c) The grantee's obligations under the Terms and Conditions of the grant application package of Subsection R315-15-16.2(b) shall be deemed discharged only upon acceptance of the final report by the Director.

(d) The grantee shall retain all financial and project records, supporting documents, statistical records and other records of projects funded by this program. The Director, or his authorized representative, shall have access to all related records during progress of the project and for at least three years after completion.

**KEY:** ~~financial assurance, hazardous waste,~~ used oil, registration, grants, recycling

**Date of Enactment or Last Substantive Amendment:** ~~February 13, 2017~~2018

**Notice of Continuation:** March 10, 2016

**Authorizing, and Implemented or Interpreted Law:** 19-6-704; 19-6-720



WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Final Adoption

UAC R315-260, Hazardous Waste Management System

UAC R315-261, General Requirements – Identification and Listing of Hazardous Waste  
September 13, 2018

<b>What is the issue before the Board?</b>	Final approval from the Board is needed to adopt changes to UAC R315-260 and R315-261 to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on May 30, 2018 (83 FR 24664).
<b>What is the historical background or context for this issue?</b>	<p>At the Board meeting on July 12, 2018, the Board approved the proposed changes to UAC R315-260 and R315-261 to be filed with the Office of Administrative Rules for publication in the <i>Utah State Bulletin</i>. The proposed rule changes were published in the August 1, 2018 issue of the <i>Utah State Bulletin</i> (Vol. 2018, No. 15).</p> <p>Selected pages from the <i>Utah State Bulletin</i> showing the publication of the propose changes follow this Executive Summary.</p>
<b>What is the governing statutory or regulatory citation?</b>	<p>The Board is authorized under Subsection 19-6-105(1)(c) to make rules governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage and disposal facilities.</p> <p>The Board is authorized under Subsection 19-6-104(3)(d) to meet the requirements of federal law related to solid and hazardous wastes to insure that the solid and hazardous wastes program provided for in this part is qualified to assume primacy from the federal government in control over solid and hazardous waste.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
<b>Is Board action required?</b>	Yes. Board approval for final adoption of the rule changes is necessary.
<b>What is the Division Director's recommendation?</b>	The Director recommends that the Board approve final adoption of the rule changes to UAC R315-260 and R315-261 as published in the August 1, 2018 issue of the <i>Utah State Bulletin</i> and set an effective date of September 21, 2018.
<b>Where can more information be obtained?</b>	Please contact Tom Ball (801) 536-0251, <a href="mailto:tball@utah.gov">tball@utah.gov</a> or Rusty Lundberg (801) 536-4257, <a href="mailto:rlundberg@utah.gov">rlundberg@utah.gov</a> .

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed July 03, 2018, 12:00 a.m. through July 16, 2018, 11:59 p.m.

Number 2018-15  
August 01, 2018

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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# TABLE OF CONTENTS

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<b>SPECIAL NOTICES</b> .....	<b>1</b>
Commerce	
Occupational and Professional Licensing	
Proposed Building Codes and Amendments Under the Utah Uniform	
Building Standards Act.....	1
<b>EXECUTIVE DOCUMENTS</b> .....	<b>49</b>
Governor	
Administration	
Calling the Sixty-Second Legislature Into the Second Special Session,	
Utah Proclamation No. 2018-2S.....	49
<b>NOTICES OF PROPOSED RULES</b> .....	<b>51</b>
Attorney General	
Administration	
No. 43075 (Amendment): R105-2 Records Access and Management.....	52
Commerce	
Occupational and Professional Licensing	
No. 43092 (Amendment): R156-9 Funeral Service Licensing Act Rule.....	53
Environmental Quality	
Waste Management and Radiation Control, Waste Management	
No. 43081 (Amendment): R315-15-16 Grants.....	57
No. 43079 (Amendment): R315-260 Hazardous Waste Management	
System.....	61
No. 43080 (Amendment): R315-261 General Requirements -- Identification	
and Listing of Hazardous Waste.....	65
Health	
Disease Control and Prevention, Environmental Services	
No. 43076 (Repeal and Reenact): R392-301 Recreational Vehicle Park	
Sanitation.....	84
UTech Board of Trustees	
Administration	
No. 43093 (New Rule): R945-1 UTech Scholarship.....	92
Workforce Services	
Employment Development	
No. 43086 (Amendment): R986-700-779 Educational Improvement	
Opportunities Outside of the Regular School Day Grant Program.....	95
<b>FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION</b> .....	<b>99</b>
Administrative Services	
Administration	
No. 43059: R13-1 Public Petitions for Declaratory Orders.....	99
Facilities Construction and Management	
No. 43069: R23-30 State Facility Energy Efficiency Fund.....	99
Alcoholic Beverage Control	
Administration	
No. 43057: R81-4C Limited Restaurant Licenses.....	100
No. 43058: R81-4D On-Premise Banquet License.....	101
Education	
Administration	
No. 43082: R277-470 Charter Schools - General Provisions.....	101
No. 43083: R277-481 Charter School Oversight, Monitoring and Appeals.....	102
No. 43084: R277-492 Utah Science Technology and Research Initiative	
(USTAR) Centers Program.....	102
No. 43085: R277-619 Student Leadership Skills Development.....	103

TABLE OF CONTENTS

---

Health	
Disease Control and Prevention, Environmental Services	
No. 43077: R392-103 Food Handler Training and Certificate.....	103
Insurance	
Administration	
No. 43067: R590-186 Bail Bond Surety Business.....	104
Title and Escrow Commission	
No. 43068: R592-10 Title Insurance Regulation Assessment for Agency	
Title Insurance Producers and Title Insurers.....	105
Public Service Commission	
Administration	
No. 43056: R746-344 Filing Requirements for Telephone Corporations with	
Less Than 5,000 Access Line Subscribers.....	105
No. 43087: R746-345 Pole Attachments.....	106
No. 43088: R746-404 Regulation of Promotional Programs of Electric and	
Gas Public Utilities.....	106
No. 43089: R746-406 Advertising by Electric and Gas Utilities.....	107
No. 43090: R746-500 Americans With Disabilities Act Complaint Procedure.....	107
No. 43091: R746-600 Postretirement Benefits other than Pensions.....	108
<b>NOTICES FIVE-YEAR REVIEW EXTENSION.....</b>	<b>109</b>
Health	
Disease Control and Prevention, Laboratory Services	
No. 43078: R438-13 Rules for the Certification of Institutions to Obtain	
Impounded Animals in the State of Utah.....	109
<b>NOTICES OF RULE EFFECTIVE DATES.....</b>	<b>111</b>
<b>RULES INDEX</b>	
<b>BY AGENCY (CODE NUMBER)</b>	
<b>AND</b>	
<b>BY KEYWORD (SUBJECT).....</b>	<b>113</b>

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**KEY:** ~~financial assurance, hazardous waste,~~ used oil, registration, grants, recycling

**Date of Enactment or Last Substantive Amendment:** ~~February 13, 2017~~ 2018

**Notice of Continuation:** March 10, 2016

**Authorizing, and Implemented or Interpreted Law:** 19-6-704; 19-6-720

**Environmental Quality, Waste  
Management and Radiation Control,  
Waste Management  
R315-260  
Hazardous Waste Management  
System**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 43079

FILED: 07/12/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The state of Utah adopted these rules in January of 2016. The federal rules were challenged in the United States Court of Appeals for the District of Columbia Circuit on 07/07/2017, and amended on 03/06/2018, and the court issued orders vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. These proposed changes incorporate the revisions required by the court's orders.

**SUMMARY OF THE RULE OR CHANGE:** Section R315-260-30 is amended by removing Subsection R315-260-30(f) which allowed the Director to exclude from the definition of solid waste hazardous secondary materials that were transferred for reclamation at a verified reclamation facility. Section R315-260-31 is amended by removing Subsection R315-260-31(d) which contained the criteria for becoming a verified reclamation facility. Section R315-260-42 is amended by adding Subsection R315-260-42(a)(5) which requires reclaimers and intermediate facilities managing hazardous secondary materials to submit, along with other information, whether the reclaimer or intermediate facility has financial assurance. Section R315-260-43 is amended by removing Subsection R315-260-43(a)(4) which was one of the four mandatory factors used to determine if a facility's recycling is legitimate. Subsection R315-260-43(a) is amended to require facilities to meet three mandatory criteria in determining if their recycling is legitimate and to consider a fourth set of criteria which is added at Subsection R315-260-43(b).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-104 and Section 19-6-105 and Section 19-6-106

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule change will not affect the state budget because no state governmental entity is a verified recycler of hazardous secondary materials and does not generate or recycle hazardous secondary materials.
- ◆ **LOCAL GOVERNMENTS:** This rule change will not affect any local governments because no local governments are verified recyclers of hazardous secondary materials and do not generate or recycle hazardous secondary materials.
- ◆ **SMALL BUSINESSES:** It is anticipated that there will be no change in costs or savings to small businesses because there are no small businesses in the state of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered, but not required, for the process to be considered legitimate.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there will be no change in costs or savings to persons other than small businesses, businesses or local governments because there are no such persons in the state of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered, but not required, for the process to be considered legitimate.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is anticipated that there will be no additional compliance costs for affected persons associated with these rule amendments since they replace mandatory requirements with more discretionary considerations.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Since this rule was adopted in January of 2016, there have been no businesses in the state of Utah that have registered as verified recyclers. Only two businesses have notified that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials. It is not anticipated that these rule changes will have any fiscal impact on the operation of these facilities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION  
 CONTROL, WASTE MANAGEMENT  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at rlundberg@utah.gov

◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at tball@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2018

THIS RULE MAY BECOME EFFECTIVE ON: 09/14/2018

AUTHORIZED BY: Scott Anderson, Director

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Net Fiscal Benefits:	\$0	\$0	\$0

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures, because there are no businesses in the state of Utah that are registered as verified recyclers or intermediate facilities reclaiming hazardous secondary materials. Additionally there are only two facilities with NAICS codes 33231 and 324110 in the state of Utah that have notified the Division of Waste Management and Radiation Control, Waste Management that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials and the rule changes is not expected to have any fiscal impact on them since they replace mandatory requirements with more discretionary considerations.

The head of Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-260. Hazardous Waste Management System.**

**R315-260-30. Non-Waste Determinations and Exclusion from Classification as a Solid Waste.**

In accordance with the standards and criteria in Sections R315-260-31 and 34 and the procedures in Section R315-260-33, the Director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- (a) Materials that are accumulated speculatively without sufficient amounts being recycled, as defined in Subsection R315-261-1(c)(8);
- (b) Materials that are reclaimed and then reused within the original production process in which they were generated;
- (c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;
- (d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and
- (e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate; and
- ~~(f) Hazardous secondary materials that are transferred for reclamation under Subsection R315-261-4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit or interim status standards].~~

**R315-260-31. Standards and Criteria for Exclusion from Classification as a Solid Waste.**

(a) The Director may grant requests for exclusion from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If exclusion is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Director's decision will be based on the following criteria:

- (1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur, for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling;
- (2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Director may grant requests for exclusion from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it; and

(7) Other relevant factors.

(c) The Director may grant requests for exclusion from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the change in classification is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in Section R315-260-43 and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material, e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading; and

(5) Whether the partially-reclaimed material is handled to minimize loss.

~~[(d) The Director may grant requests for an exclusion from classification as a solid waste those hazardous secondary materials that are transferred for reclamation under Subsection R315-261-4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit or interim status standards. The Director's decision will be based on the following criteria:~~



~~(1) The reclamation facility or intermediate facility shall demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to Section R315-260-43;~~

~~(2) The reclamation facility or intermediate facility shall satisfy the financial assurance condition in Subsection R315-261-4(a)(24)(vi)(F);~~

~~(3) The reclamation facility or intermediate facility shall not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier, or shall provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;~~

~~(4) The intermediate or reclamation facility shall have the equipment and trained personnel needed to safely manage the hazardous secondary material and shall meet emergency preparedness and response requirements under Sections R315-261-400 through 420;~~

~~(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility shall have the permits required, if any, to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment, and~~

~~(6) The intermediate or reclamation facility shall address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment; i.e., releases that are not covered by a permit, such as a permit to discharge to water or air, which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and shall include consideration of potential cumulative risks from other nearby potential stressors.]~~

#### **R315-260-42. Notification Requirement for Hazardous Secondary Materials.**

(a) Facilities managing hazardous secondary materials under [Subsections]Section R315-260-30, or Subsections R315-261-4(a)(23), (24), ~~(25)~~, or (27) shall send a notification prior to operating under the [exclusion(s)]regulatory provision and by March 1 of each even numbered year thereafter to the Director using EPA Form 8700-12 that includes the following information:

(1) The name, address, and EPA ID number, if applicable, of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The regulation under which the hazardous secondary materials shall be managed;

(5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with Subsections R315-261-4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

~~(5)6~~ When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

~~(6)7~~ A list of hazardous secondary materials that shall be managed according to the regulation, reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes;

~~(7)8~~ For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

~~(8)9~~ The quantity of each hazardous secondary material to be managed annually; and

~~(9)10~~ The certification, included in EPA Form 8700-12, signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility shall notify the Director within thirty days using EPA Form 8700-12. For purposes of Section R315-260-42, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

#### **R315-260-43. Legitimate Recycling of Hazardous Secondary Materials.**

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations shall be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons shall address all the requirements of Subsections R315-260-43(a)(1) through ~~(4)3~~ and shall consider the requirements of Subsection R315-260-43(b).

(1) Legitimate recycling shall involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process shall produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler shall manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material shall be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material shall be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(b) The following factor shall be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The product of the recycling process does not:

(i) Contain significant concentrations of any hazardous constituents found in Section R315-261-1092 that are not found in analogous products; or

(ii) Contain concentrations of hazardous constituents found in Section R315-261-1092 at levels that are significantly elevated from those found in analogous products, or

(iii) Exhibit a hazardous characteristic, as defined in Subsections R315-261-20 through 24, that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons shall evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

~~\_\_\_\_\_ (4) The product of the recycling process shall be comparable to a legitimate product or intermediate:~~

~~\_\_\_\_\_ (i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:~~

~~\_\_\_\_\_ (A) The product of the recycling process does not exhibit a hazardous characteristic, as defined in Sections R315-261-20 through 24, that analogous products do not exhibit, and~~

~~\_\_\_\_\_ (B) The concentrations of any hazardous constituents found in appendix VIII of Rule R315-261 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.~~

~~\_\_\_\_\_ (ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:~~

~~\_\_\_\_\_ (A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications, e.g., commodity specification grades for common metals, or~~

~~\_\_\_\_\_ (B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused, e.g., closed loop recycling.~~

~~\_\_\_\_\_ (iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per Subsection R315-260-43(a)(4)(i) or (ii), the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling shall conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous~~

~~constituents that pose a significant human health or environmental risk. The documentation shall include a certification statement that the recycling is legitimate and shall be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling shall notify the Director of this activity using EPA Form 8700-12.]~~

**KEY: hazardous waste**

**Date of Enactment or Last Substantive Amendment: [~~August 31, 2017~~2018**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106**

## Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-261** General Requirements -- Identification and Listing of Hazardous Waste

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43080

FILED: 07/12/2018

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In 2015, the EPA published final revisions to rules regulating the definition of solid waste that exclude certain hazardous secondary materials from regulation. The state of Utah adopted these rules in January of 2016. The federal rules were challenged in the United States Court of Appeals for the District of Columbia Circuit on 07/07/2017, and amended on 03/06/2018, issued orders vacating certain provisions of the 2015 rule and reinstated corresponding provisions from a rule proposed in 2008. The proposed changes incorporate the revisions required by the court's orders.

**SUMMARY OF THE RULE OR CHANGE:** Section R315-261-4 is amended by changing the number of factors at Subsection R315-261-4(23)(ii)(E) to be considered when determining if the recycling is legitimate from four to three and by adding the requirement to consider the factor found at Subsection R315-260-43(b). Section R315-261-4 is amended by removing the term "verified reclamation facility" from Subsection R315-261-4(24) and replacing it with the term "another person". Section R315-261-4 is amended by replacing the requirements at Subsection R315-261-4(24)(v) (B) that required a hazardous secondary material generator to send hazardous secondary materials to a verified reclamation facility with requirements for generators who send their hazardous secondary materials to be recycled to make a reasonable effort to ensure that each claimer

intends to properly and legitimately reclaim the hazardous secondary materials. Section R315-261-4 is amended by adding a new Subsection R315-261-4(24)(v)(C) that requires a hazardous secondary material generator to maintain documentation that reasonable efforts were made to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary materials. Section R315-261-4 is amended by removing Subsection R315-261-4(24)(vi)(G) which required reclaimers and intermediate facilities to have been granted an exclusion under Subsection R315-260-31(d), which has been deleted by this rule filing, or have a Part B permit. Section R315-261-4 is amended by adding Subsection R315-261-4(25), which was previously reserved. The language added contains the requirements for the exporting of hazardous secondary materials for reclamation in a foreign country. Section R315-261-4 is amended by deleting the phrase, "operating under a verified recycler exclusion under Subsection R315-260-31(d)" from Subsections R315-261-400(a) and (b), 410(e), (f)(1) and (f)(2), 411, 411(b), 411(c) and 411(d)(3), 420, 420(a)(1) and 420(b)(2).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-104 and Section 19-6-105 and Section 19-6-106

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These rule changes will not affect the state budget because no state governmental entity is a verified recycler of hazardous secondary materials and does not generate or recycle hazardous secondary materials.
- ◆ **LOCAL GOVERNMENTS:** These rule changes will not affect any local governments because no local governments are verified recyclers of hazardous secondary materials and do not generate or recycle hazardous secondary materials.
- ◆ **SMALL BUSINESSES:** It is anticipated that there will be no change in costs or savings to small businesses because there are no small businesses in the state of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered, but not required, for the process to be considered legitimate.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there will be no change in costs or savings to persons other than small businesses, businesses, or local governments because there are no such persons in the state of Utah that are registered as verified recyclers of hazardous secondary materials. Additionally, the change to the factors for determining the legitimacy of recycling operations for hazardous secondary materials simply replaces a mandatory factor with a factor to be considered, but not required, for the process to be considered legitimate.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is anticipated that there will be no additional compliance costs for affected persons associated with these rule amendments

since they replace mandatory requirements with more discretionary considerations.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Since this rule was adopted in January of 2016 there have been no businesses in the state of Utah that have registered as verified recyclers. Only two businesses have notified the Division of Waste Management and Radiation Control, Waste Management that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials. It is not anticipated that these rule changes will have any fiscal impact on the operation of these facilities.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 ENVIRONMENTAL QUALITY  
 WASTE MANAGEMENT AND RADIATION CONTROL, WASTE MANAGEMENT  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-536-0222, or by Internet E-mail at [rlundberg@utah.gov](mailto:rlundberg@utah.gov)  
 ◆ Thomas Ball by phone at 801-536-0251, or by Internet E-mail at [tball@utah.gov](mailto:tball@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2018**

**THIS RULE MAY BECOME EFFECTIVE ON: 09/14/2018**

**AUTHORIZED BY: Scott Anderson, Director**

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Net Fiscal Benefits:	\$0	\$0	\$0

**\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

**Appendix 2: Regulatory Impact to Non-Small Businesses**

This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures, because there are no businesses in the state of Utah that are registered as verified recyclers or intermediate facilities reclaiming hazardous secondary materials. Additionally, there are only two facilities with NAICS codes 33231 and 324110 in the state of Utah that have notified the Division of Waste Management and Radiation Control, Waste Management that they are engaged in the recycling, either on-site or off-site, of hazardous secondary materials and these rule changes are not expected to have any fiscal impact on them since they replace mandatory requirements with more discretionary considerations.

The head of Department of Environmental Quality, Alan Matheson, has reviewed and approved this fiscal analysis.

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-261. General Requirements – Identification and Listing of Hazardous Waste.**

**R315-261-4. Exclusions.**

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

- (1)(i) Domestic sewage; and
- (ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while

they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through 265.445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant shall

maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums, if shipped and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director shall also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads shall meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls

fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-

bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose shall be an engineered structure made of non-earth materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

(I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers' facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(III) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

- (i) The fertilizers meet the following contaminant limits:
- (A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Concentration in Fertilizer, per Unit (1%) of Zinc ppm	Total Concentration (ppm)
Arsenic	0.3	
Cadmium	1.4	
Chromium	0.6	
Lead	2.8	
Mercury	0.3	

(B) For dioxin contaminants the fertilizer shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing shall also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

- (A) The dates and times product samples were taken, and the dates the samples were analyzed;
- (B) The names and qualifications of the person(s) taking the samples;
- (C) A description of the methods and equipment used to take the samples;
- (D) The name and address of the laboratory facility at which analyses of the samples were performed;
- (E) A description of the analytical methods used, including any cleanup and sample preparation methods; and
- (F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling

contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all ~~four~~ three factors in Subsection R315-260-43(a) and how the factor in Subsection R315-260-43(b) was considered. Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to ~~a verified reclamation facility~~ another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a claimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make reasonable efforts to ensure that each claimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each claimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards, the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts shall be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each claimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the claimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator shall affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(I) Does the available information indicate that the reclamation process is legitimate pursuant to Section R315-260-43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources including the reclamation facility and audit reports about the reclamation process.

(II) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to Section R315-260-42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per Subsection R315-261-4(a)(24)(vi)(F)? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per Section R315-260-42, including the requirement in Subsection R315-260-42(a)(5) to notify the Director whether the claimer or intermediate facility has financial assurance.

(III) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three



years for violations of Sections R315-260 through 268, 270, and 273 and has not been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of Sections R315-260 through 268, 270, and 273 and has been classified as a significant non-complier with Sections R315-260 through 268, 270, and 273, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(IV) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(V) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator shall maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification shall be made available upon request by the Director within 72 hours, or within a longer period of time as specified by the Director. The certification statement shall:

(I) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(II) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to (insert name(s) of reclamation facility and any intermediate facility), reasonable efforts were made in accordance with Subsection R315-261-4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

~~[(B) The hazardous secondary material generator shall arrange for transport of hazardous secondary materials to a verified reclamation facility, or facilities, in the United States. A verified reclamation facility is a facility that has been granted an exclusion under Subsection R315-260-31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility shall have been granted an exclusion under Subsection R315-260-31(d) or the management of the hazardous secondary materials at that facility shall be addressed under a hazardous waste Part B permit or interim status standards, and the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.]~~

~~[(D)]~~ The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

- (I) Name of the transporter and date of the shipment;
- (II) Name and address of each claimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;
- (III) The type and quantity of hazardous secondary material in the shipment.

~~[(E)]~~ The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each claimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the claimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

~~[(F)]~~ The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The claimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

- (I) Name of the transporter and date of the shipment;
- (II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the claimer or intermediate facility which the hazardous secondary materials were received from;
- (III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

~~\_\_\_\_\_ (G) The reclaimer and intermediate facility have been granted an exclusion under Subsection R315-260-31(d) or have a hazardous waste Part B permit or interim status standards that address the management of the hazardous secondary materials; and ]~~

(vii) ~~In addition, [A] all persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.~~

(25) ~~[Reserved] Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of Subsection R315-261-4(a)(24)(i)-(v), excepting Subsection R315-261-4(a)(24)(v)(B)(2) for foreign reclaimers and foreign intermediate facilities, and that the hazardous secondary material generator also complies with the following requirements:~~

~~(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification shall be submitted at least sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the hazardous secondary material generator, and include the following information:~~

~~(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the hazardous secondary material generator;~~

~~(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number, UN/NA, for each hazardous secondary material as identified in 49 CFR parts 171 through 177;~~

~~(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;~~

~~(D) The estimated total quantity of hazardous secondary material;~~

~~(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;~~

~~(F) A description of the means by which each shipment of the hazardous secondary material will be transported, for example mode of transportation vehicle including air, highway, rail and water, and types of containers including drums, boxes and tanks;~~

~~(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;~~

~~(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and~~

~~(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there, for purposes of this section, the terms "EPA Acknowledgement of Consent", "country of import" and "country of transit" are used as defined in 40 CFR 262.81 with the exception that the terms in Section R315-261-4 refer to hazardous secondary materials, rather than hazardous waste;~~

~~(ii) Notifications shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system.~~

~~(iii) Except for changes to the telephone number in Subsection R315-261-4(a)(25)(i)(A) and decreases in the quantity of hazardous secondary material indicated pursuant to Subsection R315-261-4(a)(25)(i)(D), when the conditions specified on the original notification change, including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification, the hazardous secondary material generator shall provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes, except for changes to Subsection R315-261-4(a)(25)(i)(I) and in the ports of entry to and departure from countries of transit pursuant to Subsection R315-261-4(a)(25)(i)(E), has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.~~

~~(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.~~

~~(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-4(a)(25)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-4(a)(25)(i), EPA may find the~~

notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under Subsection R315-261-4(a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to Subsection R315-261-4(a)(25)(i) within thirty days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one calendar year after the close of the thirty day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent shall accompany the shipment. The shipment shall conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator shall re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with Subsection R315-261-4(a)(25)(iii) and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators shall keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System, WIETS, or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under Subsection R315-261-4(a)(25) if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System, WIETS, or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports shall be submitted electronically using EPA's Waste Import Export Tracking System, WIETS, or its successor system. Such reports shall include the following information:

(A) Name, mailing and site address, and EPA ID number, if applicable, of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number, where applicable, for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(xii) All persons claiming an exclusion under Subsection R315-261-4(a)(25) shall provide notification as required by Section R315-260-42.

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the

point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources, and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization;

filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (A) Slag from primary copper processing;
  - (B) Slag from primary lead processing;
  - (C) Red and brown muds from bauxite refining;
  - (D) Phosphogypsum from phosphoric acid production;
  - (E) Slag from elemental phosphorus production;
  - (F) Gasifier ash from coal gasification;
  - (G) Process wastewater from coal gasification;
  - (H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
  - (I) Slag tailings from primary copper processing;
  - (J) Fluorogypsum from hydrofluoric acid production;
  - (K) Process wastewater from hydrofluoric acid production;
  - (L) Air pollution control dust/sludge from iron blast furnaces;
  - (M) Iron blast furnace slag;
  - (N) Treated residue from roasting/leaching of chrome ore;
  - (O) Process wastewater from primary magnesium processing by the anhydrous process;
  - (P) Process wastewater from phosphoric acid production;
  - (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
  - (R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
  - (S) Chloride process waste solids from titanium tetrachloride production;
  - (T) Slag from primary zinc processing.
- (iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:
- (A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,
  - (B) Legitimately reclaims the secondary mineral processing materials.
- (8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.
- (9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.
- (10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the

corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

- (i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
- (ii) Hot-draining and crushing;
- (iii) Dismantling and hot-draining; or
- (iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in Subsection R315-261-4(b) (15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules

R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).

(e)(1) **Treatability Study Samples.** Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology; the type of process, e.g., batch versus continuous; size of the unit undergoing testing, particularly in relation to scale-up considerations; the time/quantity of material required to reach steady state operating conditions; or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) **Samples Undergoing Treatability Studies at Laboratories and Testing Facilities.** Samples undergoing treatability studies and the



laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

- (i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;
- (ii) The date the shipment was received;
- (iii) The quantity of waste accepted;
- (iv) The quantity of "as received" waste in storage each day;
- (v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- (vi) The date the treatability study was concluded;
- (vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

- (i) The name, address, and EPA identification number of the facility conducting the treatability studies;
- (ii) The types (by process) of treatability studies conducted;
- (iii) The names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;
- (iv) The total quantity of waste in storage each day;
- (v) The quantity and types of waste subjected to treatability studies;
- (vi) When each treatability study was conducted;
- (vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R315-261-4(e) exemption.

(11) The facility notifies the Director, by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

**R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.**

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~], that accumulates 6000

kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] that accumulates more than 6000 kg of hazardous secondary material at any time shall comply with Sections R315-261-410 and 420.

**R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.**

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility [~~operating under a verified recycler exclusion under Subsection R315-260-31(d)~~] shall

maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ shall document the refusal in the operating record.

**R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures for Facilities Generating or Accumulating 6000 Kg or Less of Hazardous Secondary Material.**

A generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ that generates or accumulates 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ shall ensure that all employees are thoroughly familiar with

proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R316-263-33. The report shall include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident, e.g., spill or fire;

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

**R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.**

A generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ that generates or accumulates more than 6000 kg of hazardous secondary material shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ that accumulates more than 6000 kg of hazardous secondary material shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility ~~[operating under a verified recycler exclusion under Subsection R315-260-31(d)]~~ may develop one contingency plan which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-262-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes in its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e.,

available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous secondary material handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous

secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

(g) Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

**KEY: hazardous waste**

**Date of Enactment or Last Substantive Amendment:** [~~August 31, 2017~~]**2018**

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

**Health, Disease Control and  
Prevention, Environmental Services  
R392-301  
Recreational Vehicle Park Sanitation**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 43076

FILED: 07/12/2018

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These amendments to Rule R392-301 simplify the rule, remove outdated language and redundancies, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**SUMMARY OF THE RULE OR CHANGE:** These amendments to Rule R392-301 provide technical and conforming changes throughout the rule, and remove unnecessary and repetitive language. Section R392-301-1 is a new section added to specify the statute under which this rule is authorized, and to explain the purpose of the rule. Section R392-301-2 is a new section added to describe individuals and groups to whom this rule applies, and to specify exclusions to such. In Section R392-301-3, added definitions for "Imminent health hazard", "Local health officer", "Operator", "Plumbing Code", and "Tiny house". Also the definitions for "recreational vehicle", "Dependent recreational vehicle", "Independent recreational vehicle", "Service building", and "Wastewater", were amended and the definition for "Self-Contained Recreational Vehicle" was removed. In Section R392-301-4, the Department of Health (Department) has made revisions including the rewording and restructuring of this section to simplify the language, and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah. A provision was added specifying a construction change is not required in any portion of a camp that was in compliance before this rule goes into effect. Other changes include specifying under what conditions a RV or tiny house may be allowed into a park and other duties of a park operator. In Sections R392-301-5 and R392-301-6, the Department has made revisions including the rewording and restructuring of these sections to simplify the language, and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah. Language was removed that was redundant due to requirements already set forth by the Department of Environment Quality and the Division of Drinking Water. Changes include requiring potable water be supplied to each site; the water system shall be protected. The requirements for the disposal of wastewater have been clarified. Section R392-301-7 is a new section and sets requirements and specifications for the construction and use of a Service Building (previously covered in Section R392-301-5). The operator's duty to supply provisions for hand washing and solid waste disposal is specified. In Section R392-301-8, standards are set for basic sanitation of park facilities including adequate lighting, pest control, and keeping the grounds and facilities clean and operable (previously Section R392-301-6). In Section R392-301-9, the Department has made revisions including the rewording and

# WASTE MANAGEMENT AND RADIATION CONTROL BOARD

## Executive Summary

### Public Comment – Proposed Rule UAC R315-301-7

### Self-Inspection of Solid Waste Management Facility

### Approval to Proceed with Public Comment

<b>What is the issue before the Board?</b>	Approval from the Board to proceed with formal rulemaking and public comment by filing with the Office of Administrative Rules and publishing in the Utah State Bulletin proposed changes to UAC R315-301-7, Self-Inspection of Solid Waste Management Facility.
<b>What is the historical background or context for this issue?</b>	In the 2018 General Session, the Legislature passed House Bill 373, Waste Management Amendments. The amendments required the Division to establish rules for self-inspection of solid waste management facilities. The proposed rule, UAC R315-301-7, outlines the requirements for solid waste management facilities that elect to perform self-inspections.
<b>What is the governing statutory or regulatory citation?</b>	The Board is authorized under Subsection 19-6-105(1)(a) to establish minimum standards for protection of human health and the environment and for the storage, collection, transport, recovery, treatment and disposal of solid waste. Subsection 19-6-109(5)(a) directs the Division to provide an opportunity for an owner or operator of a solid waste management facility to conduct self-inspections.
<b>Is Board action required?</b>	Yes. Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the Utah State Bulletin and conducting a public comment period.
<b>What is the Division Director's recommendation?</b>	The Director recommends the Board approve formal rulemaking and public comment by publishing in the Utah State Bulletin the proposed changes to UAC R315-301-7.
<b>Where can more information be obtained?</b>	If you have any questions, please contact Allan Moore at (801) 536-0211 or <a href="mailto:allanmore@utah.gov">allanmore@utah.gov</a> .

NOTE: The Word version of this form is made available as a working document for the convenience of rule filing agencies. To file a rule, an agency must use the division's online rule filing application, eRules.

**State of Utah  
Administrative Rule Analysis**

## NOTICE OF PROPOSED RULE

- \* The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- \* Please address questions regarding information on this notice to the agency.
- \* The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints.
- \* The full text of all rule filings may also be inspected at the Office of Administrative Rules.

DAR file no:		Date filed:	
State Admin Rule Filing Id:		Time filed:	
	<b>Agency No.</b>	<b>Rule No.</b>	<b>Section No.</b>
<b>Utah Admin. Code Ref (R no.):</b>	<b>R</b> 315	- 301	- 7

<b>1.</b>	<b>Agency:</b>	Waste Management and Radiation Control		
	<b>Room no.:</b>	2nd Floor		
	<b>Building:</b>	Multi-Agency State Office Building (MASOB)		
	<b>Street address 1:</b>	195 North 1950 West		
	<b>Street address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City, UT, 84116		
	<b>Mailing address 1:</b>	PO Box 144880		
	<b>Mailing address 2:</b>			
	<b>City, state, zip:</b>	Salt Lake City, UT, 84114-4880		
	<b>Contact person(s):</b>			
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>
	Rusty Lundberg	801-536-4257	801-536-0222	<a href="mailto:rlundberg@utah.gov">rlundberg@utah.gov</a>
	Tom Ball	801-536-0251	801-536-0222	tball@utah.gov

(Interested persons may inspect this filing at the above address or at the Office of Administrative Rules during business hours)

<b>2.</b>	<b>Title of rule or section (catchline):</b>	Self-Inspection of Solid Waste Management Facility		
<b>3.</b>	<b>Type of notice:</b>	New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>4.</b>	<b>Purpose of the rule or reason for the change:</b>	A new section, R315-301-7, is being added to establish the requirements for conducting a self-inspection of a solid waste management facility. During the 2018 General Session of the Legislature, H.B. 373, Waste Management Amendments, was enacted and subsequently signed by the governor. H.B. 373 amended Section 19-6-109 of the Solid and Hazardous Waste Act to allow an owner or operator of a solid waste management facility the option of performing self-inspections of the owner or operator's facility. The proposed rule changes set the requirements associated with an owner or operator performing a self-inspection. The proposed rule changes also incorporate the use of electronic information management, as envisioned by H.B. 373.		
<b>5.</b>	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>	No <u>X</u> ; Yes ___		

6.	<p><b>Summary of the rule or change:</b></p> <p>The proposed new section, R315-301-7, implements the provisions of Section 19-6-109, as amended by H.B. 373 (2018 General Session). Three new definitions for “self-inspection,” “training program,” and “certificate” are added. An owner or operator who elects to perform self-inspections will be required to provide the director of the Division of Waste Management and Radiation Control, by December 1, written notification of the intent to self-inspect during the following calendar year. The annual notification will need to identify the individual(s) who will be conducting the self-inspections. Those conducting self-inspections will need to complete the Division’s training program and receive a completion certificate issued by the Division Director prior to performing self-inspections. Self-inspections are to be conducted at least annually to determine compliance with permit, plan of operation, or applicable regulatory requirements. Documentation of each self-inspection is required using the inspection form prescribed by the Division Director and submitted in an electronic format prescribed by the Division Director within 30 days after completing a self-inspection. The proposed rule allows the Division to inspect a facility conducting self-inspections. For a severe violation of a permit, plan of operation, or rule, the Division Director may determine that an owner or operator is temporarily or permanently ineligible to perform self-inspections.</p>
7.	<p><b>Aggregate anticipated cost or savings to:</b></p> <p><b>A) State budget:</b></p> <p><b>Affected:</b> No ___; Yes <u>X</u></p> <p>H.B. 373 appropriated one-time funding to the Division to account for costs related to the development of an electronic inspection form and associated inspection data management system. The development of this new system will done by an outside contractor. A cost proposal of \$19,200 has been submitted by a contractor. There may be some undetermined, longer-term savings due to the implementation of electronic information resources. Additionally, the fiscal note for H.B. 373 stated if all facilities choose to opt-in to self-inspection, this could result in ongoing costs to the agency up to \$63,100 to review self-inspection reports and administer the certification and training program and could result in ongoing savings of \$356,100 due to a reduction in workload from allowing self-inspections. If all facilities do not opt-in to self-inspection, it could result in ongoing costs up to \$356,100 to inspect every facility annually.</p> <p><b>B) Local government:</b></p> <p><b>Affected:</b> No ___; Yes <u>X</u></p> <p>If a local government that owns and/or operates a solid waste management facility chooses to self-inspect, there may be undefined minimal administrative costs associated with the management of the inspection data in an electronic format. There will be no cost or savings impacts to facilities that choose not to perform self-inspections. The fiscal note for H.B. 373 stated the cost to waste management facilities that opt-in to the self-inspection program could be up to \$100 per facility for training and compliance. Utilizing an Internet browser based electronic data management system will also result in an inestimable savings compared to a non-browser based system since there will no direct software costs.</p> <p><b>C) Small businesses</b> (“small business” means a business employing fewer than 50 persons):</p> <p><b>Affected:</b> No ___; Yes <u>X</u></p> <p>If any small businesses that own or operate a solid waste management facility choose to self-inspect, there may be undefined minimal administrative costs associated with the management of the inspection data in an electronic format. There will be no cost or savings impacts to facilities that choose not to perform self-inspections. The fiscal note for H.B. 373 stated the cost to waste management facilities that opt-in to the self-inspection program could be up to \$100 per facility for training and compliance. Utilizing an Internet browser based electronic data management system will also result in an inestimable savings compared to a non-browser based system since there will no direct software costs.</p> <p><b>D) Persons other than small businesses, businesses, or local government entities</b> (“person” means any individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency):</p> <p><b>Affected:</b> No ___; Yes <u>X</u></p> <p>If entities that own or operate a solid waste management facility choose to self-inspect, there may be undefined minimal administrative costs associated with the management of the inspection data in an electronic format. There will be no cost or savings impacts to facilities that choose not to perform self-inspections. The fiscal note for H.B. 373 stated the cost to waste management facilities that opt-in to the self-inspection program could be up to \$100 per facility for training and compliance. Utilizing an Internet browser based electronic data management system will also result in an inestimable savings compared to a non-browser based system since there will no direct software costs.</p>



8.	<p><b>Compliance costs for affected persons:</b></p> <p>Severe violations may result in temporary or permanent ineligibility to conduct self-inspections as well as administrative penalties as amended by H.B. 373 (Section 19-6-109) and as provided by existing statute. Other compliance costs associated the management of the inspection data in an electronic format are undefined. The fiscal note for H.B. 373 stated the cost to waste management facilities that opt-in to the self-inspection program could be up to \$100 per facility for training and compliance.</p>																												
9.	<p><b>A) Comments by the department head on the fiscal impact the rule may have on businesses:</b></p> <p>If entities that own or operate a solid waste management facility choose to self-inspect, there may be undefined minimal administrative costs associated with the management of the inspection data in an electronic format. There will be no cost or savings impacts to facilities that choose not to perform self-inspections. The fiscal note for H.B. 373 stated the cost to waste management facilities that opt-in to the self-inspection program could be up to \$100 per facility for training and compliance. Utilizing an Internet browser based electronic data management system will also result in an inestimable savings compared to a non-browser based system since there will no direct software costs.</p> <p>Severe violations may result in temporary or permanent ineligibility to conduct self-inspections as well as administrative penalties as amended by H.B. 373 (Section 19-6-109) and as provided by existing statute.</p> <p><b>B) Name and title of department head commenting on the fiscal impacts:</b></p> <p>Alan Matheson, Executive Director, Department of Environmental Quality</p>																												
10.	<p><b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b></p> <p><b>State code or constitution citations (required)</b> (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :</p> <table border="1" data-bbox="186 865 836 982"> <tr> <td>19-6-105</td> <td>19-6-108</td> </tr> <tr> <td>19-6-109</td> <td>19-6-126</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>		19-6-105	19-6-108	19-6-109	19-6-126																							
19-6-105	19-6-108																												
19-6-109	19-6-126																												
11.	<p><b>This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; <i>if none, leave blank</i>):</p> <table border="1" data-bbox="186 1054 1481 1507"> <thead> <tr> <th></th> <th>First Incorporation</th> <th>Second Incorporation</th> </tr> </thead> <tbody> <tr> <td><b>Official Title of Materials Incorporated (from title page)</b></td> <td></td> <td></td> </tr> <tr> <td><b>Publisher</b></td> <td></td> <td></td> </tr> <tr> <td><b>Date Issued</b></td> <td></td> <td></td> </tr> <tr> <td><b>Issue, or version</b></td> <td></td> <td></td> </tr> <tr> <td><b>ISBN Number (optional)</b></td> <td></td> <td></td> </tr> <tr> <td><b>ISSN Number (optional)</b></td> <td></td> <td></td> </tr> <tr> <td><b>Cost of Incorporated Reference</b></td> <td></td> <td></td> </tr> <tr> <td><b>Action: Adds, updates, or removes</b></td> <td></td> <td></td> </tr> </tbody> </table> <p>(If this rule incorporates more than two items by reference, please attach additional pages)</p>			First Incorporation	Second Incorporation	<b>Official Title of Materials Incorporated (from title page)</b>			<b>Publisher</b>			<b>Date Issued</b>			<b>Issue, or version</b>			<b>ISBN Number (optional)</b>			<b>ISSN Number (optional)</b>			<b>Cost of Incorporated Reference</b>			<b>Action: Adds, updates, or removes</b>		
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<b>Action: Adds, updates, or removes</b>																													
12.	<p><b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)</p> <p><b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b> 10/31/2018</p> <p><b>B) A public hearing (optional) will be held:</b></p> <table border="1" data-bbox="186 1801 1481 1915"> <tr> <td><b>On (mm/dd/yyyy):</b></td> <td><b>At (hh:mm AM/PM):</b></td> <td><b>At (place):</b></td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>		<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>																								
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<b>13.</b>	<b>This rule change may become effective on (mm/dd/yyyy):</b>	11/16/2018
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.		
<b>14.</b>	<b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")); may not include the name of the agency:	
	solid waste management	solid waste disposal
	self-inspection	
<b>15.</b>	<b>Attach an RTF document containing the text of this rule change (filename):</b>	
<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.		
<b>AGENCY AUTHORIZATION</b>		
<b>Agency head or designee, and title:</b>	Scott T. Anderson, Division Director	<b>Date</b> (mm/dd/yyyy):

DSHW-2018-008671

**Appendix 1: Regulatory Impact Summary Table\***

<b>Fiscal Costs</b>	FY 2019	FY 2020	FY 2021
State Government	\$19,200 electronic data system development  \$63,100 self-inspection data review, training program if all facilities opt in to self-inspect (HB 373 FN)  \$356,100 if no facilities opt in to self-inspect (HB 373 FN)	\$63,100 self-inspection data review, training program if all facilities opt in to self-inspect (HB 373 FN)  \$356,100 if no facilities opt in to self-inspect (HB 373 FN)	\$63,100 self-inspection data review, training program if all facilities opt in to self-inspect (HB 373 FN)  \$356,100 if no facilities opt in to self-inspect (HB 373 FN)
Local Government	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)
Small Businesses	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)
Non-Small Businesses	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)
Other Person	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)	\$100 per facility that opts to perform self-inspections (HB 373 FN)
<b>Total Fiscal Costs:</b>	\$82,300 self-inspection data review, training program if all facilities opt in to self-inspect  \$375,300 if no facilities opt in to self-inspect  \$17,000 for 170 total SW mgmt. facilities	\$63,100 self-inspection data review, training program if all facilities opt in to self-inspect  \$356,100 if no facilities opt in to self-inspect  \$17,000 for 170 total SW mgmt. facilities	\$63,100 self-inspection data review, training program if all facilities opt in to self-inspect  \$356,100 if no facilities opt in to self-inspect  \$17,000 for 170 total SW mgmt. facilities

<b>Fiscal Benefits</b>			
State Government	\$118,700 if all facilities opt in to self-inspect (HB 373 FN)	\$118,700 if all facilities opt in to self-inspect (HB 373 FN)	\$118,700 if all facilities opt in to self-inspect (HB 373 FN)
Local Government	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)
Small Businesses	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)
Non-Small Businesses	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)
Other Persons	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)	\$100 per facility that does not opt in to self-inspect (HB 373 FN)
<b>Total Fiscal Benefits:</b>	\$118,700 if all facilities opt in to self-inspect (HB 373 FN)  \$17,000 for 170 total SW mgmt. facilities	\$118,700 if all facilities opt in to self-inspect (HB 373 FN)  \$17,000 for 170 total SW mgmt. facilities	\$118,700 if all facilities opt in to self-inspect (HB 373 FN)  \$17,000 for 170 total SW mgmt. facilities
Net Fiscal Benefits:	\$36,400 if all facilities opt in to self-inspect  (\$375,300) if no facilities opt in to self-inspect  \$0 for 170 total SW mgmt. facilities	\$55,600 if all facilities opt in to self-inspect  (\$356,100) if no facilities opt in to self-inspect  \$0 for 170 total SW mgmt. facilities	\$55,600 if all facilities opt in to self-inspect  (\$356,100) if no facilities opt in to self-inspect  \$0 for 170 total SW mgmt. facilities

\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

## Appendix 2: Regulatory Impact to Non-Small Businesses

Conducting self-inspections is voluntary; therefore the complete fiscal impact is unknown and inestimable. However, the fiscal note for H.B. 373 stated that the fiscal impact to an individual solid

waste management facility that chooses to perform self-inspections is estimated to be \$100 for training and compliance with the self-inspection requirements. Additionally, the electronic self-inspection reporting system will be Internet browser based which will be an inestimable savings compared to a non-browser based system which would otherwise require costs to acquire software to be installed and operated on individual facility computers.

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-301. Solid Waste Authority, Definitions, and General Requirements.**

\*\*\*\*\*

**R315-301-7. Self-Inspection of Solid Waste Management Facility.**

(1) Authority. This section is authorized by Section 19-6-109.

(2) Purpose. The purpose of this section is to set standards for the owner or operator of a solid waste management facility who elects to conduct self-inspections of the facility and to set qualification requirements for a person who performs self-inspections.

(3) Definitions. Terms used in this section are defined in Section 19-6-102 and Section R315-301-2.

(a) In addition, the following definitions apply:

(i) "Self-inspection" means an inspection conducted by an employee or authorized representative of the owner or operator of a solid waste management facility to determine compliance with the permit, plan of operation or applicable solid waste rules.

(ii) "Training Program" means the program conducted by the Director or an authorized representative to ensure that the owner or operator's self-inspections are sufficient to evaluate compliance with the owner or operator's permit, plan of operation or applicable rules.

(iii) "Certificate" means the document issued by the Director certifying that the owner or operator, or an authorized representative, has completed the required training and is eligible to conduct self-inspections under this section.

(4) Notification.

(a) An owner or operator of a solid waste management facility may elect to self-inspect the owner or operator's solid waste management facility. The owner or operator shall provide a written notification to the Director by December 1 of the intent to self-inspect during the next calendar year.

(b) The yearly notification of Subsection R315-301-7(4)(a) shall identify the individual(s) who will be conducting self-inspections under this section.

(5) Training.

(a) Prior to conducting self-inspections, each owner or operator, or an authorized representative, shall complete the training program prescribed by the Director.

(b) Upon completion of the training, the Director shall issue a certificate to each person who completes the training.

(c) No person shall conduct a solid waste management facility self-inspection under this section before receiving a certificate to

conduct a self-inspection.

(6) Inspections.

(a) The owner or operator shall inspect the facility at least annually to determine compliance with all the conditions of the permit, plan of operation or applicable solid waste rules.

(b) The owner or operator shall document each inspection using the inspection form prescribed by the Director.

(c) The owner or operator shall submit the inspection form to the Director in an electronic format prescribed by the Director.

(d) The owner or operator shall submit the inspection form to the Director within 30 days after the date of inspection.

(e) The owner or operator shall include a copy of the completed inspection form in the facility operating record.

(f) The Division may inspect a facility conducting self-inspections to ensure compliance with this section.

(7) Suspension or Revocation of Self-Inspection Privileges.

(a) The Director may determine that, upon a severe violation by an owner or operator of Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, a rule made by the board, the permit or plan of operation, an owner or operator is temporarily or permanently ineligible to conduct self-inspections under this section.

**KEY: solid waste management, solid waste disposal, self-inspection  
Date of Enactment or Last Substantive Amendment: [~~August 31,~~  
2017]2018**

**Notice of Continuation: January 12, 2018**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108;  
19-6-109; 40 CFR 258**

DSHW-2018-008670

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD**  
**Executive Summary**  
**Jordan Valley Water Conservancy District (JVWCD)**  
**September 13, 2018**

<p><b>What is the issue before the Board?</b></p>	<p>Approval of a proposed Stipulation and Consent Order (SCO), No. 1807055, to resolve Notices of Violation Nos. 1709022 and 1806048 issued to the JVWCD. The SCO includes a penalty of \$64,965. A copy of the SCO is included in the Board's packet.</p>
<p><b>What is the historical background or context for this issue?</b></p>	<p>On September 22, 2017, the Director issued Notice of Violation and Compliance Order (NOV/CO), No. 1709022, to the JVWCD. Violations included the following:</p> <ol style="list-style-type: none"> <li>1. Failure to have the required wording on hazardous waste-containing barrels.</li> <li>2. Failure to apply the date accumulation began on hazardous waste-containing barrels.</li> <li>3. Failure to obtain an EPA identification number from the Director prior to transporting and storing hazardous waste.</li> <li>4. Transporting hazardous waste without a manifest.</li> <li>5. Disposing of solid waste without a permit.</li> </ol> <p>On June 20, 2018, the Director also issued Notice of Violation 1806048 to the JVWCD for failure to submit a draft Sampling and Analysis Plan for the Director's review by the date ordered in the previously issued NOV/CO.</p> <p>Notice of a 30-day public comment period on the proposed SCO was printed in the Salt Lake Tribune and the Deseret News on August 9, 2018. The comment period ends on September 10, 2018.</p>
<p><b>What is the governing statutory or regulatory citation?</b></p>	<p>Utah Code Annotated § 19-6-113.  Utah Administrative Code Sections R315-262-32(b), R315-262-34(2), R315-263-11, R315-263-20, and R315-301-4.</p>
<p><b>Is Board action required?</b></p>	<p>Yes. Board action is required.</p>
<p><b>What is the Division Director's recommendation?</b></p>	<p>The Director recommends that the Board approve Stipulation and Consent Order No. 1807055.</p>
<p><b>Where can more information be obtained?</b></p>	<p>For further information, please contact Bret Randall at (801) 536-0284 or Ed Costomiris at (801) 536-0219.</p>



State of Utah

GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

Department of  
Environmental Quality

Alan Matheson  
*Executive Director*

DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL  
Scott T. Anderson  
*Director*

July 12, 2018

Richard P. Bay  
General Manager/CEO  
Jordan Valley Water Conservancy District  
8215 South 1300 West  
West Jordan, Utah 84088

**RE: Proposed Stipulation and Consent Order No. 1807055 for Resolution of Notice of Violation and Compliance Order No. 1709022 and Notice of Violation No. 1806048**

Dear Mr. Bay:

Enclosed please find a proposed Stipulation and Consent Order (SCO) and penalty calculations worksheets to resolve the above-referenced matters. The SCO includes a penalty of \$41,210 for Notice of Violation and Compliance Order No. 1709022 and a penalty of \$13,000 for Notice of Violation No. 1806048. The Division of Waste Management and Radiation Control expended \$10,755 in administrative response costs to develop and implement the Sampling and Analysis Plan on the Jenstate property. I infer from your letter of June 28, 2018 that Jordan Valley Water Conservancy District will reimburse those costs.

When we reach agreement, I will publish notice of a 30-day public comment period on this proposed SCO, in accordance with Utah Administrative Code R315-124-34. I will then present the proposed SCO to the Board, with all public comments, if any, and my responses to those comments. After the Board approves the SCO, I will submit the final version of the SCO to you for your signature. I will then sign the SCO, which will become effective on the date I sign it.

Please call me at (801) 536-0203 by July 31, 2018 to tell me if the terms are acceptable or to schedule a meeting to discuss the SCO.

Sincerely,

Scott T. Anderson, Director  
Division of Waste Management and Radiation Control

(Over)

DSHW-2018-006391

195 North 1950 West • Salt Lake City, UT  
Mailing Address: P.O. Box 144880 • Salt Lake City, UT 84114-4880  
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STA/EGC/kl

Enclosure: Proposed Stipulation and Consent Order  
Penalty Narrative (DSHW-2018-006389)  
Penalty Worksheet (DSHW-2018-006390)

c: Gregory J. Savage; Ray, Quinney and Nebeker

---oo0oo---

In the Matter of:	:	<b>PROPOSED STIPULATION AND CONSENT ORDER</b>
	:	
Jordan Valley Water Conservancy District, Notice of Violation and Compliance Order No. 1709022 and Notice of Violation No. 1806048	:	<b>No. 1807055</b>
	:	

---oo0oo---

**I. JURISDICTION AND PARTIES**

1. This Stipulation and Consent Order (SCO) is made and entered into pursuant to the authority vested in the Director of the Utah Division of Waste Management and Radiation Control (Director), in accordance with the Utah Solid and Hazardous Waste Act (Act), Utah Code Ann. §19-6-101, *et seq.* The Director has jurisdiction over the subject matter of this Consent Order pursuant to Utah Code Ann. §19-6-112.
2. This SCO is made and entered into by the Director and Jordan Valley Water Conservancy District (JVWCD).
3. Pursuant to Utah Code Ann. §19-6-104(1)(f), because this SCO will result in a civil penalty in excess of \$25,000, the Waste Management and Radiation Control Board must review and approve or disapprove the SCO.

**II. FINDINGS**

4. JVWCD is a Utah special services district.
5. JVWCD is a “person” as defined in Utah Code Ann. § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules), the Act, and the Permit.
6. Notice of Violation and Consent Order No. 1709022 (the 2017 NOV/CO) was issued to JVWCD on September 22, 2017.
7. JVWCD filed a Request for Agency Action challenging the 2017 NOV/CO on October 20, 2017.
8. Notice of Violation No. 1806048 was issued to JVWCD on June 20, 2018.

**III. STIPULATION AND CONSENT ORDER**

9. The parties now wish to fully resolve the 2017 NOV/CO and the 2018 NOV without further administrative or judicial proceedings.

10. In full settlement of the violations alleged in the 2017 NOV/CO, JWCD shall pay a penalty of \$41,210.
11. In full settlement of the violation alleged in the 2018 NOV, JWCD shall pay a penalty of \$13,000.
12. JWCD shall pay the Director's \$10,755 administrative response costs for preparation and implementation of the Sampling and Analysis Plan.
13. Within 30 days of the Effective Date (as defined below), JWCD agrees as follows:
  - a. JWCD shall pay a penalty in the sum of \$54,210, by check made payable to the Division of Waste Management and Radiation Control, delivered or mailed to Scott T. Anderson, Director, Division of Waste Management and Radiation Control, Department of Environmental Quality, P.O. Box 144880, Salt Lake City, Utah 84114-4880; and
  - b. JWCD shall pay to the Division of Waste Management Radiation Control, past administrative response costs in the sum of \$10,755 by check made payable to the Division of Waste Management and Radiation Control, delivered or mailed to Scott T. Anderson, Director, Division of Waste Management and Radiation Control, Department of Environmental Quality, P.O. Box 144880, Salt Lake City, Utah, 84114-4880.

#### **IV. EFFECT OF CONSENT ORDER; EFFECTIVE DATE**

14. The Director and JWCD recognize that this SCO has been negotiated in good faith and that by entering into this SCO, JWCD does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this SCO, the validity of the matters addressed in this SCO. JWCD agrees to comply with and be bound by the terms of this SCO and further agrees that it will not contest the basis or validity of this SCO or its terms.
15. Except as specifically provided in this SCO, this SCO resolves the 2017 NOV/CO and the 2018 NOV and releases JWCD from any and all liability and claims under the authority of the Director and the Board for civil penalties that may be sought by the Director, or past administrative or other response costs that may have been incurred by the Director, arising from the matters addressed in this SCO. Nothing in this SCO shall limit the power and authority of the Director to take, direct, or order all actions necessary, in connection with future violations of the Act, or the applicable Rules, to protect human health, welfare, or the environment. Further, nothing in this SCO shall prevent the Director or the Board from seeking legal or equitable relief to enforce the terms of this SCO or from taking other legal or equitable action as they deem appropriate and necessary in connection with future violations of the Act.
16. As of the effective date, this SCO will be a final administrative order subject to the civil enforcement provisions of Utah Code Ann. § 63G-4-501 and other applicable law, including Utah Code Ann. § 19-6-113.

17. By entering into this SCO, JWCD withdraws its Requests for Agency Action filed in response to the 2017 NOV/CO.

Jordan Valley Water Conservancy District

Division of Waste Management and Radiation Control

\_\_\_\_\_  
Richard P. Bay  
General Manager/CEO

\_\_\_\_\_  
Scott T. Anderson, Director  
Division of Waste Management and Radiation Control

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 1

Violation Description:

Failing to Have Required Wording on Containers

1. Gravity Based Penalty

- (a) Potential for Harm – Moderate. Without the proper labeling, the waste had the potential to be mismanaged. In fact, three drums were mismanaged, being sent offsite as a non-hazardous waste. The required labeling would have indicated that the contents of the drums were hazardous waste.
- (b) Extent of Deviation – Major. There were three metal drums that contained spent blast media that failed the toxicity characteristic leaching procedure (TCLP) for lead. All three drums lacked the required wording.
- (c) Multiple/Multi-day – N/A

2. Adjustment Factors (if applicable) –

- (a) Good faith – N/A
- (b) Willfulness/Negligence – N/A
- (c) History of Compliance or Noncompliance – N/A
- (d) Ability to pay – N/A
- (e) Other Unique Factors –

3. Economic Benefit –

4. Recalculation of Penalty based on New Information –

**TOTAL: \$4,940**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 2

Violation Description: Failing to Apply the Date Accumulation Began on Containers

1. Gravity Based Penalty

- (a) Potential for Harm – Minor. The date of accumulation began did not significantly affect the management of the containers.
- (b) Extent of Deviation – Major. All three drums that failed TCLP for lead lacked the date accumulation began.

(c) Multiple/Multi-day – N/A

2. Adjustment Factors (if applicable) –

(a) Good faith –

(b) Willfulness/Negligence –

(c) History of Compliance or Noncompliance – N/A

(d) Ability to pay –

(e) Other Unique Factors –

3. Economic Benefit –

4. Recalculation of Penalty based on New Information –

**TOTAL: \$1,170**

(attach additional sheets if necessary)

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 3

Violation Description:

Failing to Obtain an EPA ID Number

1. Gravity Based Penalty
  - (a) Potential for Harm – Major. The RCRA program requires the tracking of waste from the point of generation to the disposal facility. This is the “cradle to grave” concept of waste management and is the backbone of the RCRA program. The mechanism for tracking the waste from the cradle to grave is the EPA ID number. Since an EPA ID number was not obtained, the tracking of the waste was not possible.
  - (b) Extent of Deviation – Major. JWCD failed to obtain an EPA ID number as required.
  - (c) Multiple/Multi-day –
2. Adjustment Factors (if applicable) –
  - (a) Good faith –
  - (b) Willfulness/Negligence –
  - (c) History of Compliance or Noncompliance –
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors –
3. Economic Benefit- Considered, but found not appropriate.
4. Recalculation of Penalty based on New Information –

**TOTAL: \$11,700**

**NARATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 4

Violation Description: Transporting Hazardous Waste Without a Manifest

1. Gravity Based Penalty
  - (a) Potential for Harm – Major. The RCRA program requires the tracking of waste from the point of generation to the disposal facility. This is the “cradle to grave” concept of waste management and is the backbone of the RCRA program. A key component of the tracking process is the use of the uniform hazardous waste manifest. The manifest contains important information, identifying the waste for those who transport the waste and for the treatment storage and disposal facility. The information is also used in hazard communication in the event of an accident. Three drums containing hazardous waste were shipped from the point of generation without the use of a manifest.
  - (b) Extent of Deviation – Major. All three drums that failed TCLP for lead were shipped without a uniform hazardous waste manifest.
  - (c) Multiple/Multi-day – N/A
2. Adjustment Factors (if applicable) –
  - (a) Good faith –
  - (b) Willfulness/Negligence –
  - (c) History of Compliance or Noncompliance – N/A
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors –
3. Economic Benefit-Considered, but determined not to be applicable.
4. Recalculation of Penalty based on New Information –

**TOTAL: \$11,700**

(attach additional sheets if necessary)



**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1709022

Violation Number 5

Violation Description:

Disposing of Solid Waste without a Permit

1. Gravity Based Penalty

- (a) Potential for Harm – Major. When solid waste is disposed of without a permit, there is a significant possibility that it will be disposed of in a manner that could harm human health or the environment. Appropriate management standards and engineering controls would not be applied to avoid those harms. In this case, the waste was placed on the ground surface at a residence, which was across the street from a daycare facility. The Safety Data Sheet (SDS) indicates that the blast media, even before use, presents an inhalation hazard. Analysis of samples taken by the Division indicated that the spent blast media contained high levels of hexavalent chromium, a known carcinogen. Further, the concentration of the hexavalent chromium exceeds the values established in the Regional Screening Levels for a residential setting.
- (b) Extent of Deviation – Major. JWCD did not obtain a permit to dispose solid waste on the property.

(c) Multiple/Multi-day –

2. Adjustment Factors (if applicable) –

- (a) Good faith – N/A
- (b) Willfulness/Negligence –
- (c) History of Compliance or Noncompliance – N/A
- (d) Ability to pay – N/A
- (e) Other Unique Factors –

3. Economic Benefit-Considered but not calculated due to the difficulty in determining the amount of benefit.

4. Recalculation of Penalty based on New Information –

**TOTAL: \$11,700**

(attach additional sheets if necessary)

SETTLEMENT PENALTY AMOUNT

Company Name: Jordan Valley Water Conservancy District  
 ID#:

NOV #: 1709022  
 NOV Date: 09 Sept 2017

Prepared By: Ed Costomiris  
 Date Prepared: 10 July 2018

Finding number (from NOV)	1	2	3	4
Finding Description	Words on Containers	Accumulation Dates	No EPA ID Number	Transporting Without a Manifest
1. Gravity based penalty from the matrix	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
(a) Potential for Harm	Moderate	Minor	Major	Major
(b) Extent of Deviation	Major	Major	Major	Major
2. Select an amount from the appropriate multiday matrix cell				
(a) Number of days of violation				
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$0.00	\$0.00	\$0.00
4. Add items 1 and 3	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
5. Good Faith				
(a) Percent increase				
(b) Percent decrease				
6. Willfulness/negligence				
(a) Percent increase				
(b) Percent decrease				
7. History of compliance/noncompliance				
(a) Percent increase				
(b) Percent decrease				
8. Other unique factors				
(a) Percent increase				
(b) Percent decrease				
9. Total items 5 through 8	0%			0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	\$0.00	\$0.00
11. Add items 4 and 10	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
12. Adjustment for environmental project				
13. Subtract item 12 from item 11	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
14. Calculate economic benefit				
15. Add items 13 and 14	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00
16. Adjustment amount for ability to pay				
17. Adjustment amount for litigation risk				
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$4,940.00	\$1,170.00	\$11,700.00	\$11,700.00

TOTAL THIS PAGE = \$29,510 RUNNING TOTAL = \$29,510

SETTLEMENT PENALTY AMOUNT

Company Name: Jordan Valley Water Conservancy District  
 ID#:

NOV #: 1709022  
 NOV Date: 20 June 2018

Prepared By: Ed Costomiris  
 Date Prepared: 10 July 2018

Finding number (from NOV)	5				
Finding Description	Disposing of Solid Waste without a Permit				
1. Gravity based penalty from the matrix	\$11,700.00				
(a) Potential for Harm	Major				
(b) Extent of Deviation	Major				
2. Select an amount from the appropriate multiday matrix cell					
(a) Number of days of violation					
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4. Add items 1 and 3	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
5. Good Faith					
(a) Percent increase					
(b) Percent decrease					
6. Willfulness/negligence					
(a) Percent increase					
(b) Percent decrease					
7. History of compliance/noncompliance					
(a) Percent increase					
(b) Percent decrease					
8. Other unique factors					
(a) Percent increase					
(b) Percent decrease					
9. Total items 5 through 8			10%		0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
11. Add items 4 and 10	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
12. Adjustment for environmental project					
13. Subtract item 12 from item 11	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
14. Calculate economic benefit					
15. Add items 13 and 14	\$11,700.00	\$0.00	\$0.00	\$0.00	\$0.00
16. Adjustment amount for ability to pay					
17. Adjustment amount for litigation risk					
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$11,700.00		\$0.00	\$0.00	

Violations 1 through 5

\$41,210.00

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 1806048

Violation Number 1

Violation Description: Failing to Provide a Sampling and Analysis Plan as Required

1. Gravity Based Penalty

- (a) Potential for Harm – Major. The lack of a timely Sampling and Analysis Plan (SAP) delayed characterization and subsequent removal of the spent blast media. As a result, the spent blast media remained on the ground, subject to wind and other dispersal, for an additional 100 days, beside a residence and directly across the street from a daycare.
- (b) Extent of Deviation – Major. J VWCD failed to provide the Director with a Sampling and Analysis Plan as required in the Notice of Violation, Dated September 22, 2018 and again in correspondence dated October 25, 2017, which ordered that the SAP be provided within 14 days. The 14 days expired on November 8, 2017. The Draft SAP was provided on February 9, 2018, 100 days following the November 8, 2017 deadline.
- (c) Multiple/Multi-day – Considered but not calculated.

2. Adjustment Factors (if applicable) –

- (a) Good faith –
- (b) Willfulness/Negligence –
- (c) History of Compliance or Noncompliance –
- (d) Ability to pay – N/A
- (e) Other Unique Factors-Costs incurred by the State: Considered, but not applied.

3. Economic Benefit –

4. Recalculation of Penalty based on New Information –

**TOTAL: \$13,000**

SETTLEMENT PENALTY AMOUNT

Company Name: Jordan Valley Water Conservancy District  
 ID#:

NOV #: 1806048  
 NOV Date: 09 Sept 2017

Prepared By: Ed Costomiris  
 Date Prepared: 10 July 2018

Finding number (from NOV)	1	2	3	4
Finding Description	Failing to Provide a SAP as Required			
1. Gravity based penalty from the matrix	\$13,000.00			
(a) Potential for Harm	Major			
(b) Extent of Deviation	Major			
2. Select an amount from the appropriate multiday matrix cell				
(a) Number of days of violation				
3. Multiply Item 2 by the number of days of violation minus 1 (or other number, as appropriate)	\$0.00	\$0.00	\$0.00	\$0.00
4. Add items 1 and 3	\$13,000.00	\$0.00	\$0.00	\$0.00
5. Good Faith				
(a) Percent increase				
(b) Percent decrease				
6. Willfulness/negligence				
(a) Percent increase				
(b) Percent decrease				
7. History of compliance/noncompliance				
(a) Percent increase				
(b) Percent decrease				
8. Other unique factors				
(a) Percent increase	0%			
(b) Percent decrease				
#VALUE!	0%	0%	0%	0%
10. Multiply item 4 by item 9	\$0.00	\$0.00	\$0.00	\$0.00
11. Add items 4 and 10	\$13,000.00	\$0.00	\$0.00	\$0.00
12. Adjustment for environmental project				
13. Subtract item 12 from item 11	\$13,000.00	\$0.00	\$0.00	\$0.00
14. Calculate economic benefit				
15. Add items 13 and 14	\$13,000.00	\$0.00	\$0.00	\$0.00
16. Adjustment amount for ability to pay				
17. Adjustment amount for litigation risk				
18. Add items 16 and 17	\$0.00	\$0.00	\$0.00	\$0.00
19. Subtract item 18 from item 15 for final settlement total	\$13,000.00	\$0.00	\$0.00	\$0.00

**Total this Page = \$13,000**

# WASTE MANAGEMENT AND RADIATION CONTROL BOARD

## Request for a Site-Specific Treatment Variance

### Executive Summary

EnergySolutions, LLC

September 13, 2018

<b>What is the issue before the Board?</b>	<p>On June 27, 2018, EnergySolutions submitted a request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Administrative Code (Hazardous Waste Management Rules). EnergySolutions seeks authorization to receive an ash with dioxin/furan contamination.</p>
<b>What is the historical background or context for this issue?</b>	<p>The mixed waste facility proposes to receive up to 100 tons of ash contaminated with metals at varying levels with dioxins and furans as underlying hazardous constituents.</p> <p>If, upon receipt, this waste meets land disposal restrictions for characteristic metals, the waste may be directly disposed in the low level radioactive waste embankment regardless of dioxin and furan concentrations. However, if the facility is required to treat the waste for metals to meet the land disposal restrictions for characteristic metals, then it is also required to treat the dioxins and furans as underlying hazardous constituents.</p> <p>EnergySolutions proposes to receive this waste and treat it to meet land disposal restriction standards for the hazardous metals, if necessary. EnergySolutions is asking to be relieved of the requirement to treat the dioxins and furans. In order to ensure that this treatment is protective of the environment, EnergySolutions proposes to macroencapsulate the waste for disposal in the mixed waste landfill cell.</p> <p>This request is based on the fact that treatment of the dioxin and furan contaminants is contingent only upon the hazardous metal levels. The proposed treatment will include further encapsulating the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching.</p> <p>A corrected notice of public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on July 17, 2018. The comment period began July 17, 2018 and ended on August 16, 2018. No comments were received.</p>
<b>What is the governing statutory or regulatory citation?</b>	<p>Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268.44 of the Utah Administrative Code.</p>
<b>Is Board action required?</b>	<p>Yes, this is an action item before the Board.</p>

<p><b>What is the Division Director's recommendation?</b></p>	<p>The Director recommends approval of this variance request. The Director's recommendation of approval of this variance is based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance and will be as safe to human health and the environment as the required method.</p>
<p><b>Where can more information be obtained?</b></p>	<p>For technical questions, please contact Otis Willoughby at (801) 536-0220. For legal questions, please contact Bret Randall at (801) 536-0284.</p> <p>The request for a variance was included in the July 12, 2018 Board packet.</p>



# ENERGY *SOLUTIONS*

Exemption Request for Disposal of Munition Penetrators  
Containing Depleted Uranium

Tim Orton

September 13, 2018



# Purpose of Exemption Request

- The United States Army Joint Munitions Command (JMC) is responsible for the safe and compliant disposition of depleted uranium (DU) metal contained in 30mm munitions
- The munitions are being stored at the Tooele Army Depot in Utah (1 hour drive to Clive) and the Crane Army Ammunition Activity facility in Indiana
- The U.S. Army will begin disassembling the munitions immediately upon award of a contract
- Waste disposal in Utah results in tax dollar benefits to the Utah Education Fund

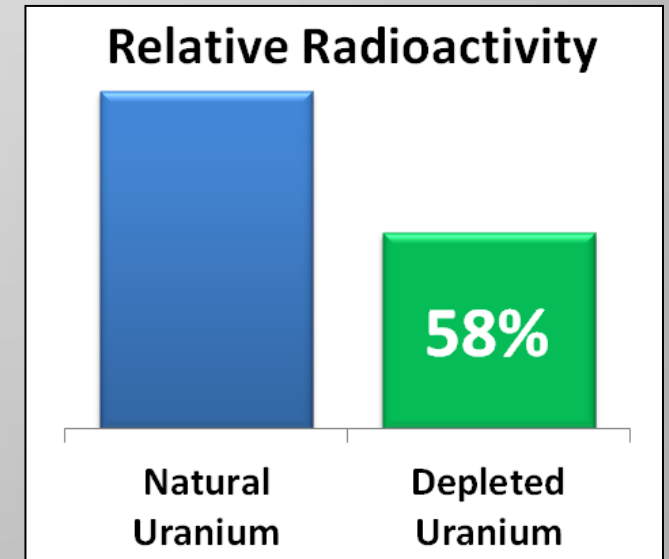


# Natural and Depleted Uranium

- Natural uranium is found throughout Utah in rocks and soil, in water and air, and in materials made from natural substances
- In order to produce fuel for certain types of nuclear reactors and nuclear weapons, uranium has to be enriched in U-235. The by-product from this enrichment process contains reduced amounts of U-234 and U-235 and, as a result, is called “depleted uranium” which is primarily U-238.
- The specific activity of depleted uranium is 58% of the specific activity of natural uranium (Reference: International Energy Atomic Agency)

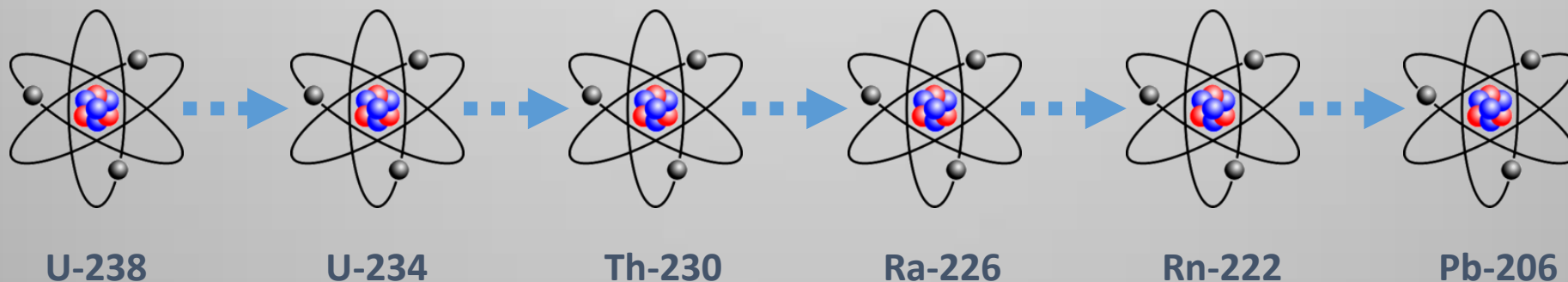


**Natural Uranium Deposits in Utah**



# Radioactive Decay

- All radioactive material decays to stable elements over time
- One atom of uranium decays to one atom of stable lead
- Essentially all traces of decay products beyond U-234 and Th-231 have been removed during extraction and chemical processing of the uranium prior to enrichment
- It takes approximately two million years for the decay products to reach their maximum activity after which they begin to decay to essentially no activity



# Beneficial Uses of Depleted Uranium Metal



Medical Device  
Shielding



Package Shielding



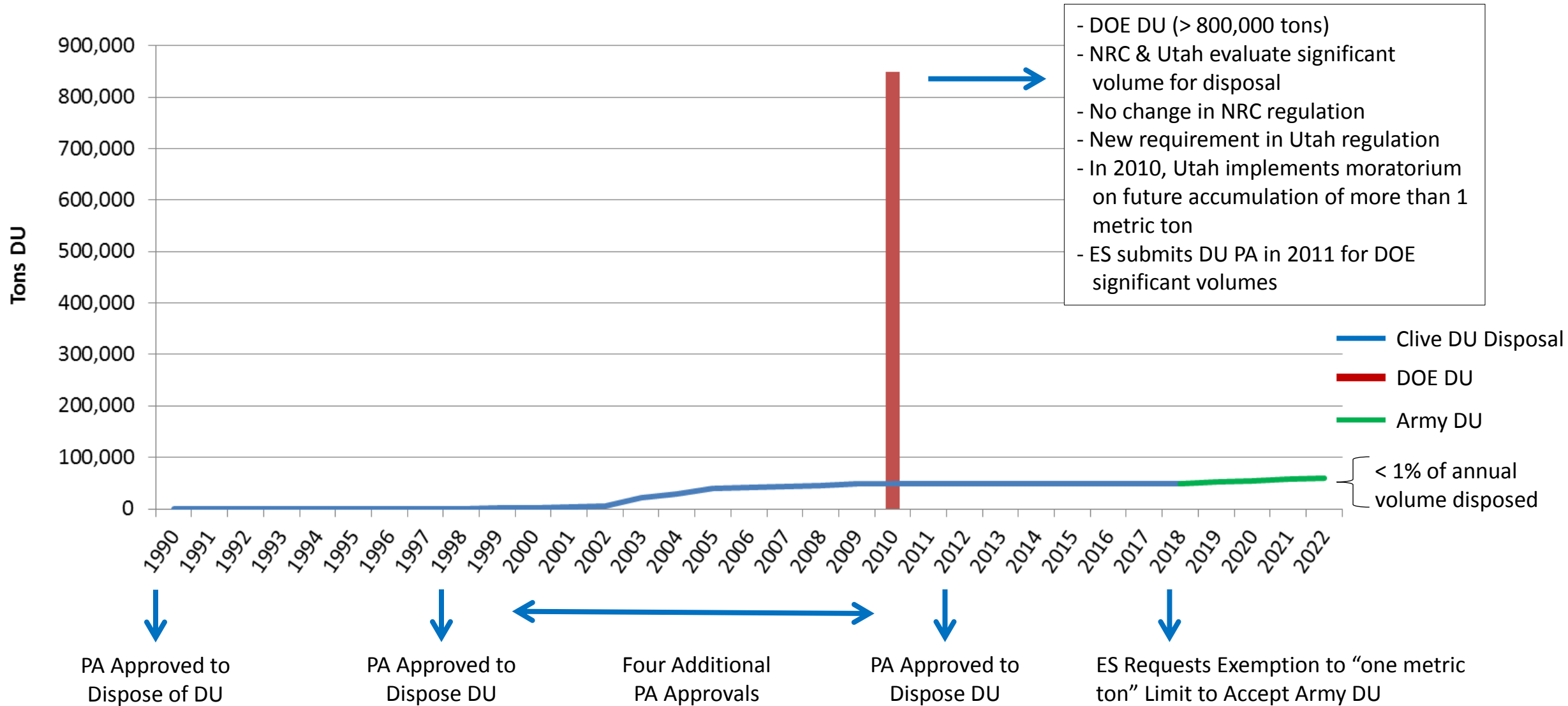
Airplane and Ship  
Counterweights

# Other Uses of Depleted Uranium Metal



Military uses for munitions  
and tank armor

# Depleted Uranium Disposal at Clive



# Exemption Request – Key Facts

- EnergySolutions is requesting the Board grant an exemption to the R313-25-9 (5)(a) limit of more than one metric ton in total accumulation
- The exemption requested would allow for the disposal of DU penetrators from the U.S. Army
- The protection to human health and the environment gained through R313-25-9 remain in-tact with this exemption because a small increase has already been considered in the Licensee's approved performance assessment (PA)
- **Disposal of these DU Penetrators does not result in an unanalyzed condition**

# Utah Administrative Rule R313-25-9



- An exemption from the definition of “significant quantities” as more than one metric ton in Utah Administrative Rule R313-25-9 is required for disposal of DU Penetrators

(5)(a) Notwithstanding Subsection R313-25-9(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 Director'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....



# Disposal of this Type of Waste has Been Previously Analyzed



- EnergySolutions completed a performance assessment (PA) and received a license in 1990 to manage low activity radioactive waste which included depleted uranium
- EnergySolutions completed an updated PA and renewed their license in 1998 to manage Class A radioactive waste (including depleted uranium). Four other updates to the PA model were completed and approved from 1998 to 2012. The PA was again updated (and included depleted uranium) and approved in 2012 for creation of the Class A West embankment.
- 49,000 tons of depleted uranium have been safely disposed under authority granted by the 1990 and 1998 licenses at the Clive Utah disposal facility between 1990 and 2010

# Utah Moratorium Rule

- U.S. NRC considered depleted uranium in their initial 1981 draft waste classification rules. Uranium excluded in classification final rule, because it was not deemed a critical exposure risk to the general public in the quantities generally considered available for disposal.
- More than 800,000 tons of depleted uranium will be generated by the U.S. Department of Energy. Originally, U.S. DOE did not plan to dispose of this waste in a commercially licensed facility but then began evaluating commercial disposal options.
- U.S. NRC staff raised concern that significant quantities of DOE generated depleted uranium was not specifically considered when setting radioactive classification limits. NRC directed staff to evaluate the need for a revision to the regulations.
- Because of concerns with U.S. NRC's evaluation, the Radiation Control Board preemptively passed rules restricting depleted uranium disposal to one ton until a performance assessment evaluating the impact of significant quantities of depleted uranium is approved.

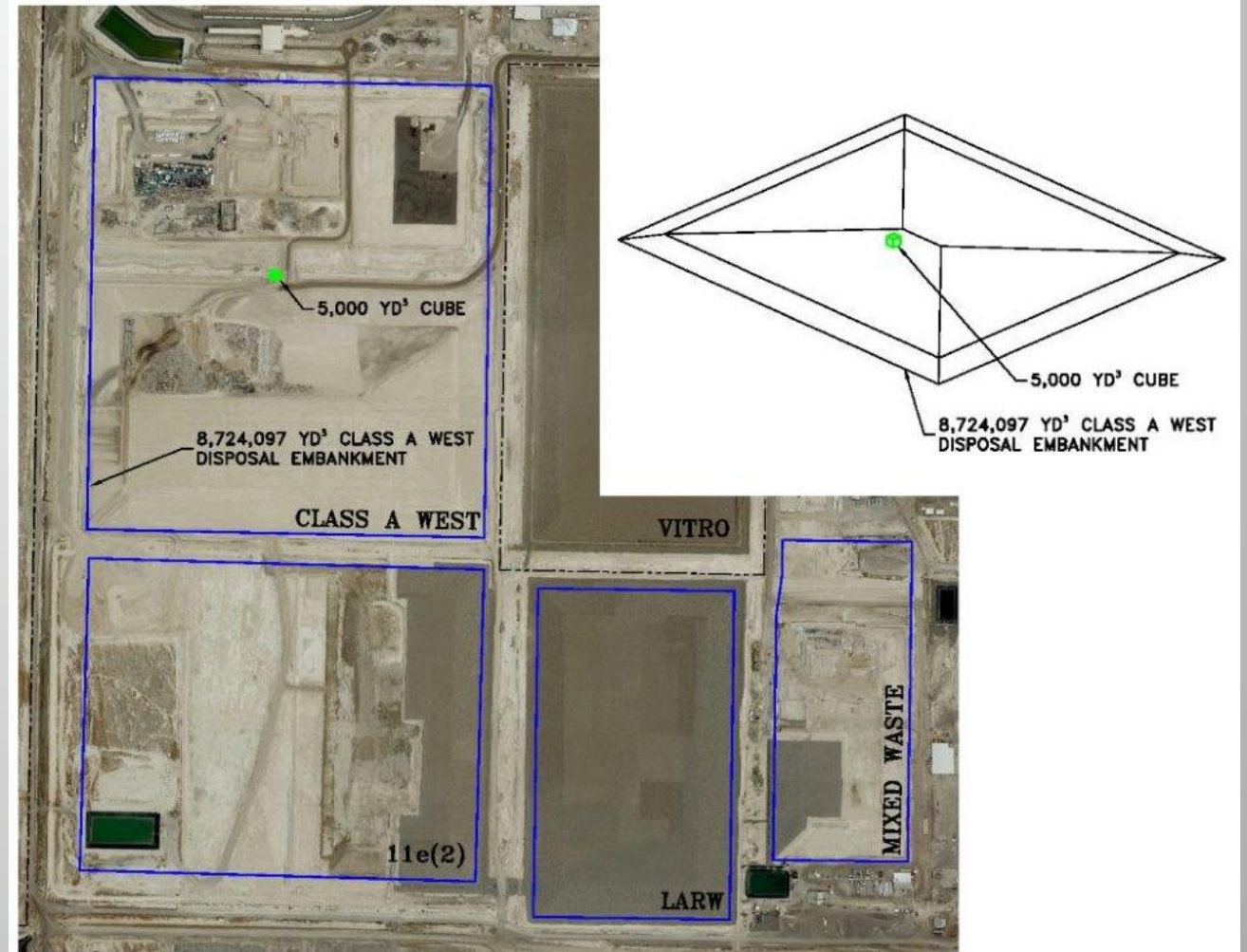
# Utah Moratorium Rule



- Since 2011, *EnergySolutions* has been working cooperatively with the DWMRC Director to complete a performance assessment that considers disposal of significant quantities of DU. This exemption request does not impact *EnergySolutions*' support of its performance assessment for significant quantities of depleted uranium.
- U.S. NRC has not promulgated new rules and most likely will not change their classification that depleted uranium is Class A LLRW
- There are no equivalent federal rules to the depleted uranium moratorium that was promulgated in Utah
- As has been demonstrated by *EnergySolutions*' previous approved license performance assessments, there is no correlation between the arbitrary one metric tonne moratorium limit and the site's ability to safely dispose of depleted uranium

# Disposal of DU Penetrators at Clive

- The receipt of the U.S. Army depleted uranium at Clive will be **less than one percent** of the annual volume received for disposal



# Proven and Authorized Disposal of DU



**EnergySolutions** has proven expertise and an embankment specifically designed to isolate and safely dispose of the DU penetrators



# ENERGY *SOLUTIONS*

