



State of Utah

SPENCER J. COX  
Governor

DEIDRE HENDERSON  
Lieutenant Governor

Department of  
Environmental Quality

Kimberly D. Shelley  
Executive Director

DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL

Douglas J. Hansen  
Director

A meeting of the Waste Management and Radiation Control Board has been scheduled for May 12, 2022, at 1:30 pm at the Utah Department of Environmental Quality, (Multi-Agency State Office Building) Conference Room #1015, 195 North 1950 West, SLC.

Board members and interested persons may participate electronically/telephonically.

Join via the Internet: [meet.google.com/gad-sxsd-uvs](https://meet.google.com/gad-sxsd-uvs)

Join via the Phone: (US) +1 978-593-3748 PIN: 902 672 356#

AGENDA

- I. Call to Order.
- II. Public Comments on Agenda Items.
- III. Declarations of Conflict of Interest.
- IV. Approval of the meeting minutes for the April 14, 2022, Board meeting ..... Tab 1  
**(Board Action Item)**
- V. Petroleum Storage Tanks Update..... Tab 2
- VI. Underground Storage Tank Rules..... Tab 3
  - A. Approval of proposed changes to Underground Storage Tank Rules R311-200, 201, 203, 204, 205, 206, 207, 208, 211, and 212 for initial publication and 30-day public comment period **(Board Action Item)**.
- VII. Administrative Rules ..... Tab 4
  - A. Final adoption of proposed rule changes to Utah Administrative Code Rule R313-12-3, *Definitions*, and R313-19-100, *Transportation*, to incorporate federal regulatory changes made by the NRC to the federal radioactive materials regulations in 2015 (80 FR 33987) and 2019 (84 FR 65639) **(Board Action Item)**.

(Over)

VIII. X-Ray Program ..... Tab 5

A. Approval of Mammography Imaging Medical Physicist (MIMPs) in accordance with UCA 19-3-103.1(2)(c) of the Utah Code Annotated (**Board Action Item**).

IX. Director's Report.

X. Other Business.

A. Miscellaneous Information Items.

B. Scheduling of next Board meeting (June 9, 2022).

XI. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Larene Wyss, Office of Human Resources at (801) 536-4284, Telecommunications Relay Service 711, or by email at "lwyss@utah.gov".

Waste Management and Radiation Control Board Meeting  
Utah Department of Environmental Quality  
Multi-Agency State Office Building (Conf. Room #1015)  
195 North 1950 West, SLC  
April 14, 2022  
1:30 p.m.

**Board Members Participating at Anchor Location:**

Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Steve McIff, Nathan Rich, Vern Rogers, Scott Wardle, Shane Whitney

**Board Members Participating Virtually:** Richard Codell, Danielle Endres, Mark Franc

**Board Members Excused:** Kim Shelley

**UDEQ Staff Members Participating at Anchor Location:**

Brent Everett, Doug Hansen, Morgan Atkinson, Tom Ball, Charles Bishop, Therron Blatter, Tyler Hegburg, Avery Holyoak, Larry Kellum, Jalynn Knudsen, Arlene Lovato, Deborah Ng, Mike Pecorelli, Elisa Smith, Otis Willoughby

**Others Attending at Anchor Location:** Steve Gurr, Tim Orton, Dan Shrum

**Other UDEQ employees and interested members of the general public also participated either electronically or telephonically.**

**I. Call to Order.**

**II. Public Comments on Agenda Items – None.**

**III. Declarations of Conflict of Interest – None.**

**IV. Approval of the meeting minutes for the March 10, 2022 Board meeting (Board Action Item).**

**It was moved by Shane Whitney and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve the March 10, 2022 Board meeting minutes.**

**V. Petroleum Storage Tanks Update.**

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of February 2022, was \$25,635,681.00. The preliminary estimate of the cash balance of the PST Trust Fund for the end of March 2022, was \$25,570,649.00. The DERR continues to watch the balance of the PST Trust Fund closely to ensure sufficient cash is available to provide coverage of qualified claims for releases.

**VI. Underground Storage Tank Rules.**

- A. Proposed changes to R311-200, 201, 203, 204, 205, 206, 207, 208, 211, and 212 of the Underground Storage Tank (UST) rules to incorporate the regulation of aboveground petroleum storage tanks as required by changes to the UST Act made by SB40 in the 2021 legislative session (Information Item).

Morgan Atkinson, PST Compliance Section Manager, informed the Board that the DERR is proposing changes to the Underground Storage Tank (UST) Rules.

The proposed rules to be changed are:

- R311-200, Underground Storage Tanks: Definitions.
- R311-201, Underground Storage Tanks: Certification Programs and UST Operator Training.
- R311-203, Underground Storage Tanks: Technical Standards.
- R311-204, Underground Storage Tanks: Closure and Remediation.
- R311-205, Underground Storage Tanks: Site Assessment Protocol.
- R311-206, Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
- R311-207, Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.
- R311-208, Underground Storage Tank Penalty Guidance.
- R311-211, Corrective Action Cleanup Standards Policy-UST and CERCLA Sites.
- R311-212, Administration of the Petroleum Storage Tank Loan Program.

These changes are being proposed in response to Senate Bill 40 (SB40) that was passed in 2021. SB40 gives the DERR regulatory authority over certain aboveground petroleum storage tanks (APSTs). The DERR is specifically responsible to manage closures, notification requirements, financial assurance, and petroleum delivery restrictions as appropriate. SB40 has been effective since May 5, 2021, and since then the DERR has been managing APSTs closures, petroleum spill reporting, and investigation and cleanup for new regulated APST releases. The proposed changes are available on the DERR website at <https://documents.deq.utah.gov/environmental-response-and-remediation/ust-lust/branch/DERR-2022-008476.pdf> and in the April 2022 WMRC Board Packet. Mr. Atkinson gave a presentation on APSTs and the proposed rule changes.

Dennis Riding asked about the definition of tanks on the ground. Mr. Riding recommended that the language defining “ground” be moved into the rules. Mr. Riding also asked about performance standards particularly those regarding the State Fire Code. Therron Blatter, the PST Branch Manager, said that portions of the State Fire Code are necessary because the statute requires substantial compliance with all state and federal statutes, rules, and regulations in order to issue a certificate of compliance (COC).

Danielle Endres asked about leaks from previous unregulated APSTs. Mr. Atkinson explained that the DERR typically takes the lead on APST releases through a Memorandum of Understanding (MOU) with the Division of Water Quality (DWQ). If a facility does not work with the DERR, the release is transferred back to the DWQ. Ms. Endres asked what a site assessment is. It was explained that a site assessment is collecting soil and groundwater samples around the area of the PST components to ensure there is not a current or past release. Ms. Endres asked why facilities are given until 2026 to come into full compliance with the new rules. Mr. Atkinson said the timeline was based on having all tanks in compliance prior to the incremental coverage beginning for releases. It was also mentioned that there can be financial issues as well and contractor and equipment shortages if the timeframe is too short.

Nathan Rich asked where the definition of exempt tanks is listed in the rule. Mr. Atkinson stated that it is not listed in rule, it is covered in the definition of an APST in statute in SB40.

Scott Wardle asked about the potential future litigation issues based on using fire code as part of the COC process. Mr. Blatter stated that the DERR has been working with the Attorney General’s Office on the rules. Mr. Everett said that the DERR can have further conversations with the State Fire Marshall’s office. Mr. Wardle recommended the State Fire Marshall’s Office provide confirmation of lack of compliance to help prevent protracted legal issues in the future.

Mr. Riding recommended an MOU similar to the one in existence with the DWQ. Mr. Riding asked about the comments received so far. Mr. Blatter stated that the calls so far have been fairly neutral or positive to this point. Mr. Everett said that there has been tremendous outreach through DERR staff and through the members of the PST Advisory Task Force. They have been very helpful in getting word to the new regulated

community. Mr. Riding agreed that it would be helpful to have the definition of APSTs listed in the rule in addition to statute.

Mr. Rich recommended staying away from fire department rules. Mr. Blatter said that the DERR has tried to keep the APST rules that reference the fire code to be specific to PST equipment standards.

## VII. Administrative Rules.

- A. Final adoption of proposed rule changes to Utah Administrative Code (UAC) Rule R313-28-140 of the Radiation Control Rules, to amend the qualifications for mammography imaging medical physicists in the State of Utah to ensure consistency with the federal regulations overseen by the Food and Drug Administration (FDA). The changes being made will also reduce the regulatory burden on mammography imaging medical physicists by changing the frequency of recertifications from annually to every three years (Board Action Item).

Tom Ball, Planning and Technical Support Section Manager of the Division of Waste Management and Radiation Control, reviewed the request for the Board to adopt changes to UAC Rule R313-28-140 of the Radiation Control Rules, to amend the qualifications for mammography imaging medical physicists in the State of Utah to ensure consistency with the federal regulations overseen by the FDA and to change the recertification frequency from annually to every three years.

At the Board meeting on February 10, 2022, the Board approved the proposed changes to R313-28-140 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published in the March 1, 2022, issue of the Utah State Bulletin (Vol. 2022, No. 5). An Executive Summary and the selected pages from the Utah State Bulletin showing the publication of the proposed changes were included in the April 14, 2022 Board packet.

The public comment period for this rulemaking ended on March 31, 2022. No comments were received. Board approval for final adoption of the rule changes is necessary. The Director recommends the Board approve final adoption of the changes to UAC R313-28-140 as published in the March 1, 2022, issue of the Utah State Bulletin and set an effective date of April 18, 2022.

No questions were asked regarding this matter.

**It was moved by Steve McIff and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve for final adoption the proposed rule changes to Utah Administrative Code Rule R313-28-140 of the Radiation Control Rules, to amend the qualifications for mammography imaging medical physicists in the State of Utah to ensure consistency with the federal regulations overseen by the Food and Drug Administration, and to change the recertification frequency from annually to every three years, and set an effective date of April 18, 2022.**

## VIII. Low-Level Radioactive Waste.

- A. **EnergySolutions request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive Cemented Uranium Extraction Process Residues for disposal (Information Item).**

Tyler Hegburg, Environmental Scientist, Low-Level Radioactive Waste (LLRW) Section, Division of Waste Management and Radiation Control, reviewed EnergySolutions, LLC's March 22, 2022, request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules.

EnergySolutions requests approval to receive an exemption from the treatment standards described in Utah Administrative Code (UAC) R315-268-40(a)(2) for approximately 1,500 cubic feet of cemented uranium extraction process residuals encased in cement that retain hazardous waste codes D004 (arsenic); D005 (barium); D006 (cadmium); D007 (chromium) D008 (Lead); D010 (Selenium); D011 (Silver); D030 (2,4-dinitrotolunene); D032 (hexachlorobenzene); D033 (hexachlorobutadiene) and F001, F002, and F005 (spent solvents) for macroencapsulation. This exemption is requested for the purposes of safety, security, and transportation of the radioactive waste.

The waste is generated as part of uranium recovery processes at the generator's facility. The generator has three different points of generation for this waste: (1) an enriched uranium contaminated ash that has been thermally processed and then recovered through an organic solvent extraction process; (2) oxide powders and dried sludges associated with highly enriched uranium-thorium fuels; and (3) residue (sludge) from the bottom of salt baths used in the processing of uranium.

The residual waste from each of these processes is collected in small cans (~2 1/2 gallons each) and stored at the generator's facility. The process residuals within the cans have been characterized through a random sampling and analysis process.

At the beginning of this campaign, approximately 2,000 cans of process residues were collected and stored by the generator. The process is ongoing and additional cans are being generated every year.

F-listed solvent codes within this waste are derived from rags that are burned in a furnace in order to recover the uranium present within them. None of the F-listed constituents were present above their respective treatment standard concentrations within the random characterization samples of the process residues. The random characterization samples were also analyzed for metals using the Toxicity Characteristic Leaching Procedure (TCLP). These samples detected elevated concentrations of barium (up to 6,740 mg/L TCLP), cadmium (up to 16.4 mg/L TCLP), chromium (up to 15.2 mg/L TCLP), and lead (up to 10.5 mg/L TCLP).

Based on these elevated metal concentrations, the characteristic waste codes D005, D006, D007, and D008 were applied to the process residues. Slightly elevated concentrations of arsenic (D004), selenium (D010), silver (D011), 2,4-dinitrotoluene (D030), hexachlorobenzene (D032) and hexachlorobutadiene (D033) were also detected in separate analyses.

The uranium content within the process residues is enriched. From a health and safety standpoint, the enrichment makes the waste more hazardous to employees managing the waste. Further, the enriched material has increased security concerns and must be managed appropriately. To ensure the enriched uranium concentration limits required for worker safety, security, and transportation of this waste are met, appropriate packaging procedures were created and are currently being utilized at the generator's facility. These packaging procedures include repackaging the cans into 16-gallon drums and filling the void spaces with cement; formal treatment for the elevated metals concentrations is not performed during this process. The generator has assessed other options, including treatment for the hazardous constituents; however, additional processing introduced unacceptable hazards from a health and safety and security viewpoint. Additionally, the waste within the cans is inherently safe from a criticality aspect and the generator concluded that it is unwise to perform extra processing that could potentially change this aspect. The waste material packaged in these 16-gallon monolithic forms is inherently safe and is the form that will be shipped and received at the EnergySolutions Clive facility. The characteristic hazardous waste codes associated with the process residues has numerical concentration-based treatment standards based upon the leachability of the contaminants. Treatment of the monolithic form for these concentration-based treatment standards would entail a process that includes shredding of the monolith followed by mixing with a stabilizing reagent in a permitted mixer. Both of these steps could mobilize the enriched uranium and possibly cause airborne contamination, increasing the potential for releases to the environment as well as the potential for personnel exposure; thereby violating radiation protection (ALARA – As Low As Reasonably Achievable) principles. Also, the shredding of the solidified uranium ash results in a more accessible form of enriched uranium with potential security ramifications.

EnergySolutions proposes to macroencapsulate the waste, thereby isolating the waste from potential leaching media. Macroencapsulation is a permitted process utilized at the Clive facility that significantly reduces the potential for migration (leaching) of waste. Macroencapsulation requires less handling of the waste and creates a waste form for disposal that is protective of human health and the environment. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

A notice for public comment was published in the Salt Lake Tribune on April 10, 2022, the Deseret News on April 8, 2022 and the Tooele County Transcript Bulletin on April 13, 2022. The comment period began April 14, 2022 and will end May 13, 2022.

This variance request has been requested 13 times, dating back to 2007.

This is an informational item before the Board. The Director will provide a recommendation following the public comment period at the June 9, 2022 Board meeting.

Danielle Endres questioned why the Board continues to see these types of variance requests and specifically asked if staff could address the issue if our state regulations are not appropriate to address this particular type of waste and how the NRC regulations relate to these types of variance requests in a broader context.

Otis Willoughby, Low-Level Radioactive Section Manager, stated that the State regulations mirror the federal regulations regarding this matter. Specifically, when the US EPA enacted the regulations that govern this type of waste, they had not envisioned the odd waste that the Department of Defense would create, specifically the radioactive material generated waste processes. Therefore, most of the variance requests brought to the Board by EnergySolutions is outside the normal governance of waste. The variances are a safe way to be equally protective without the extra steps that would be required of purely non-radioactive chemical waste.

Scott Wardle questioned the one-time treatment variance request that has actually been approved 13 times and wondered if it was a disingenuous account of what is occurring. Mr. Willoughby stated that this because the State is tied to the rules and these are on-going waste streams. The rules do not allow for a renewal; variance requests are only valid for one year.

Mr. Wardle stated that then the Board is primarily looking at a time period that makes for the need for a variance request not the waste stream. Mr. Willoughby concurred with that statement and stated the Board will continue to see the one-time site specific variances.

**B. EnergySolutions request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to receive lithium and lithium-ion batteries for treatment and disposal (Information Item).**

Tyler Hegburg, Environmental Scientist, Low-Level Radioactive Waste (LLRW) Section, Division of Waste Management and Radiation Control, reviewed EnergySolutions, LLC's March 22, 2022, request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules.

EnergySolutions seeks authorization to receive an exemption from Utah Administrative Code (UAC) R315-268-40 and R315-268-45 for the direct macroencapsulation treatment of approximately 1000 lbs. of lithium and lithium-ion batteries. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

Lithium and lithium-ion batteries typically exhibit the hazardous characteristics of ignitability (D001) and reactivity (D003). Regulations in UAC R315-268-40 (40 CFR 268.40, 2015 Edition, incorporated by reference) require that these characteristic hazards be deactivated to remove the characteristic prior to land disposal.

As an alternative, UAC R315-268-45 allows hazardous debris to be treated using an immobilization technology (e.g., macroencapsulation). However, the U.S. Environmental Protection Agency (EPA) has ruled that intact batteries are containers and not considered debris. Furthermore, the definition of macroencapsulation in UAC R315-268-42 states that “Macroencapsulation specifically does not include any material that would be classified as a tank or container.” In order to meet the regulatory standards described above, lithium and lithium-ion batteries would need to be shredded and mixed with chemicals to deactivate them; or punctured (and then considered debris) to macroencapsulate them. Both of these activities (shredding and puncturing) severely agitate the waste and would expose the reactive portion of the waste to open air which could cause an adverse reaction or explosion. Although this type of waste management is possible, from a safety and health standpoint, it is inappropriate.

EnergySolutions proposes to manage this waste by directly macroencapsulating the intact batteries. Macroencapsulation is a permitted treatment technology that isolates hazardous waste from the environment, eliminating the potential for harmful reactions from exposure to the environment. Macroencapsulation requires less handling of the waste and creates a waste form for disposal that is protective of human health and the environment. EnergySolutions proposes to macroencapsulate the waste, thereby isolating the waste from potential leaching media. Macroencapsulation is a permitted process utilized at the Clive facility that significantly reduces the potential for migration (leaching) of waste. Macroencapsulation requires less handling of the waste and creates a waste form for disposal that is protective of human health and the environment.

EnergySolutions has received approximately 850 lbs. of this type of waste since the first variance approval in 2021. This variance request is for the ongoing processing and disposal of this type of waste.

A notice for public comment was published in the Salt Lake Tribune on April 10, 2022, the Deseret News on April 8, 2022 and the Tooele County Transcript Bulletin on April 13, 2022. The 30-day public comment period began April 14, 2022 and will end May 13, 2022.

This is an informational item before the Board. The Director will provide a recommendation following the public comment period at the June 9, 2022 Board meeting.

Mr. Hegburg informed the Board that the following statement on the Executive Summary that was included in the Board’s April 14, 2022 Board’s packet was a typographical error and will be removed, “Macroencapsulation also adds a further level of security restricting access to the enriched uranium”.

Nathan Rich asked if the lithium and lithium-ion batteries are radioactive. Mr. Hegburg confirmed that the lithium and lithium-ion batteries are radioactive.

#### **IX. Election of Board Chair and Vice Chair (Board Action Item).**

Chairman Mickelson informed the Board that each year a Board Chairman and Board Vice-Chairman must be elected. Chairman Mickelson then conducted the elections.

Shane Whitney nominated Brett Mickelson to serve as Board Chairman. No other nominees were presented to serve as Board Chairman.

**It was moved by Shane Whitney and seconded by Nathan Rich and UNANIMOUSLY CARRIED that Brett Mickelson continue to serve as Board Chair.**

Shane Whitney nominated Dennis Riding to serve as Board Vice-Chairman. No other nominees were presented to serve as Board Vice-Chairman.

**It was moved by Steve McIff and seconded by Nathan Rich and UNANIMOUSLY CARRIED that Dennis Riding continue to serve as Board Vice-Chair.**

On behalf of the rest of the Board members, Nathan Rich thanked Chairman Mickelson and Vice-Chairman Riding for their willingness to continue to serve in their appointed positions.

**X. Other Business.**

**A. Miscellaneous Information Items – None.**

**B. Scheduling of next Board meeting (May 12, 2022).**

The next meeting is scheduled for May 12, 2022 at 1:30 p.m.

**XI. Adjourn.**

The meeting adjourned at 2:35 pm.

DRAFT

**PST STATISTICAL SUMMARY**

**April 1, 2021 -- March 31, 2022**

PROGRAM													
	April	May	June	July	August	September	October	November	December	January	February	March	(+/-) OR Total
<b>Regulated Tanks</b>	4,136	4,146	4,139	4,142	4,140	4,128	4,136	4,142	4,136	4,132	4,150	4,157	<b>21</b>
<b>Tanks with Certificate of Compliance</b>	4,058	4,063	4,067	4,065	4,056	4,050	4,052	4,060	4,049	4,048	4,059	4,061	<b>3</b>
<b>Tanks without COC</b>	78	83	72	77	84	78	84	82	87	84	91	96	<b>18</b>
<b>Cumulative Facilities with Registered A Operators</b>	1,251	1,250	1,291	1,294	1,290	1,291	1,288	1,284	1,288	1,287	1,285	1,284	<b>98.09%</b>
<b>Cumulative Facilities with Registered B Operators</b>	1,253	1,251	1,295	1,295	1,292	1,292	1,289	1,285	1,288	1,288	1,285	1,285	<b>98.17%</b>
<b>New LUST Sites</b>	5	2	10	8	3	8	5	7	2	10	12	9	<b>81</b>
<b>Closed LUST Sites</b>	3	4	17	6	0	9	4	6	1	2	13	13	<b>78</b>
<b>Cumulative Closed LUST Sites</b>	5352	5356	5374	5378	5378	5390	5397	5398	5399	5405	5419	5431	<b>79</b>
FINANCIAL													
	April	May	June	July	August	September	October	November	December	January	February	March	(+/-)
<b>Tanks on PST Fund</b>	2,663	2,664	2,664	2,662	2,653	2,649	2,642	2,646	2,635	2,629	2,631	2,628	<b>(35)</b>
<b>PST Claims (Cumulative)</b>	690	693	696	701	701	702	702	702	702	703	704	705	<b>15</b>
<b>Equity Balance</b>	-\$8,272,438	-\$7,719,626	-\$6,964,420	-\$6,684,027	-\$5,540,984	-\$4,033,695	-\$3,921,878	-\$2,867,569	-\$2,900,167	-\$2,363,604	-\$1,761,847	-\$1,826,879	<b>\$6,445,559</b>
<b>Cash Balance</b>	\$20,162,842	\$20,715,654	\$21,470,860	\$21,751,253	\$22,894,296	\$23,363,833	\$23,475,650	\$24,529,959	\$24,497,361	\$25,033,924	\$25,635,681	\$25,570,649	<b>\$5,407,807</b>
<b>Loans</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>Cumulative Loans</b>	121	121	121	121	121	121	121	121	121	121	121	121	<b>0</b>
<b>Cumulative Amount</b>	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	<b>\$0</b>
<b>Defaults/Amount</b>	2	2	2	2	2	2	2	0	0	0	0	0	<b>-2</b>
	April	May	June	July	August	September	October	November	December	January	February	March	TOTAL
<b>Speed Memos</b>	42	81	76	82	51	78	100	77	61	41	50	76	<b>815</b>
<b>Compliance Letters</b>	13	8	7	15	16	21	8	21	16	11	18	16	<b>170</b>
<b>Notice of Intent to Revoke</b>	1	0	0	0	0	0	2	0	1	1	0	2	<b>7</b>
<b>Orders</b>	0	1	0	0	0	0	0	0	1	1	0	2	<b>5</b>

## **Approval of proposed changes to R311, Petroleum Storage Tank Rules for initial publication and 30-day public comment period - Board Action Item**

The Division of Environmental Response and Remediation (DERR) is proposing changes to R311, the Underground Storage Tank (UST) rules and adding rules for Aboveground Petroleum Storage Tanks (APST)s. These changes are presented as an action item requesting Board approval to proceed with initial publication and 30-day public comment period.

### **Background:**

Due to legislation passed in the 2021 session, Senate Bill SB-40, Storage Tanks Amendments, the Division of Environmental Response and Remediation (DERR) began regulating specific types of Aboveground Petroleum Storage Tanks (APSTs). The bill was approved by the House and Senate in the General Legislative Session 2021 and signed by Governor Cox on March 16, 2021.

The bill addresses the regulation of storage tanks, both APSTs and underground storage tanks. Highlighted provisions of SB-40 include; the definition of terms, addressing fees, closures, notification requirements, financial assurance requirements, provides for rulemaking, addresses the Environmental Assurance Program and participation in the Petroleum Storage Tank Fund, and imposes restrictions on the delivery of petroleum.

The bill has been in effect since May 5, 2021, requiring the DERR to solely manage closures, petroleum spill reporting, investigation and cleanup for new regulated APST releases.

Important dates include:

1. May 5, 2021: Closures, Spill reporting, investigation, and cleanup of APST releases will be managed by the DERR.
2. June 30, 2022: APST owners must complete a “Utah Notification for Aboveground Petroleum Storage Tanks” form to register their tanks and pay applicable fees.
3. June 30, 2023: APST owners must demonstrate financial responsibility and obtain a Certificate of Compliance.
4. July 1, 2023: Restrictions on the delivery of petroleum (red tag) and possible civil penalties for APSTs out of compliance.
5. July 1, 2026: APSTs must meet performance standards as defined in the International Fire Code to be enforced with these proposed rule changes

The rules to be amended are:

R311-200 Underground Storage Tanks: Definitions.

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

R311-203 Underground Storage Tanks: Technical Standards.

R311-204 Underground Storage Tanks: Closure and Remediation.

R311-205 Underground Storage Tanks: Site Assessment Protocol.

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

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

R311-208 Underground Storage Tank Penalty Guidance  
R311-211 Corrective Action Cleanup Standards Policy-UST and CERCLA Sites  
R311-212, Administration of the Petroleum Storage Tank Loan Program

A summary of the proposed changes appears below. The rule templates, including required analysis and the text of the changes, can be found in the board packet. In the rule text document, wording to be added is underlined, and wording to be removed is ~~struck out~~. A pdf containing the entire text of the proposed changes can be found on the DERR Website at [https://documents.deq.utah.gov/environmental-response-and-remediation/ust-lust/branch/DERRPage\\_82022-008476.pdf](https://documents.deq.utah.gov/environmental-response-and-remediation/ust-lust/branch/DERRPage_82022-008476.pdf).

When these rules were presented to the Board in April as an information item, the Board had concerns about a few aspects of the proposed rule. In response to these concerns, the Division has made the following changes to rule draft that was presented at the April meeting.

1. **Include the statutory definition of Aboveground Petroleum Storage Tank in the rule.** This definition has been added. [R311-200-2(a)]
2. **Include the statutory definition of “Rests directly on the ground” in the rule.** This definition has been added. [R311-200-2(xx)]
3. **Concern regarding the authority to require that owner/operators of APSTs comply with sections of the fire code to receive and/or maintain a certificate of compliance.** The proposed rule was changed to require upgrades to meet the fire code to participate in the Environmental Assurance Program rather than to qualify for a certificate of compliance. The UST Act gives the board broad authority in “administration of the petroleum storage tank program”. Now, as part of the application for a certificate of compliance, owner/operators “must certify that the PST is in substantial compliance with all state and federal statutes, rules, and regulations applicable to PST systems” to meet the requirement of 19-6-412(2)(c). Those facilities that elect to participate in the Environmental Assurance program can qualify for a certificate without meeting some specific fire code requirements related to equipment that prevent or contain releases and have until July 1, 2026 to complete needed upgrades.
4. **Concern about the Division being in a position to enforce the fire code.** Language in the proposed rule was changed to make it clear that the fire code is referenced as a standard. I.E. “meets the standards set forth in IFC 5704.2.7.9 and National Fire Protection Agency (NFPA) 30.23.3.5”

In addition, when the draft rule package was submitted to the Division of Administrative Rule for pre-filing review, we received numerous suggested edits to both the existing rule and proposed changes. These edits were primarily formatting and word usage recommendations that make the rules compliant with the Administrative Rules rule writing guidance. These edits were reviewed and most were added to the proposed rule that is now before the Board.

The proposed changes, including edits made in response to Board comments, were presented to the PST Advisory Task Force on April 27, 2022. The Task Force was supportive of the rules as proposed and with

moving forward with formal rulemaking. The Director recommends Board approval to proceed with initial publication and 30-day public comment period.

## **Summary of the Proposed Changes:**

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

- Changed title of R311-201 to Petroleum Storage Tanks: Definitions.
- In many places changed UST to PST, to include APST and UST
- R311-200-1(2)(b). Defined “Agricultural operations”
- R311-200-1(2)(c). Defined “APST” as Aboveground Petroleum Storage Tank
- R311-200-1(2)(s). Defined “EAP” as Environmental Assurance Program
- R311-200-1(2)(z)(aa). Defined “Historic contamination”
- R311-200-1(2)(z)(cc). Defined “In service”
- R311-200-1(2)(z)(ff). Defined “New releases”
- R311-200-1(2)(z)(oo). Defined “PST” as petroleum storage tank
- R311-200-1(2)(z)(ss). Defined “Reportable release”
- R311-200-1(2)(z)(ss)(ii). Clarified the definition of “Secondary containment” to include APSTs
- R311-200-1(2)(z)(zz)(bbb). Defined “Suspected release”

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

- Changed title of R311-201 to Petroleum Storage Tanks: Certification Programs and UST Operator Training
- R311-201-2(b). Changed UST consultant to PST consultant
- Changed UST to PST multiple times throughout the rule

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

- Changed title of R311-203 to Petroleum Storage Tanks: Technical Standards
- R311-203-2(5). Added notification requirements for an APST in service after May 5, 2021
- R311-203-2(6). Added requirements for an APST that is not in service before May 5, 2021 is subject to notification, delivery prohibition, and release reporting requirements
- R311-203-2(7). Added APSTs not in service before May 5, 2021, must be empty
- R311-203-4. Changed to Petroleum Storage Tank Registration Fee
- R311-203-4(7). Added notification fee requirement for regulated APSTs
- R311-203-5. Added leak detection requirements for APSTs using the EAP for financial responsibility
- R311-203-5(10)(a). Added line tightness testing requirements for APSTs on EAP
- R311-203-5(10)(b). Added spill prevention requirements for APSTs on EAP
- R311-203-5(10)(c). Phase-in requirements for leak detection for APSTs on EAP and resting on the ground
- R311-203-5(10)(d). Phase-in requirements for cathodic protection of APSTs on EAP
- R311-203-5(10)(e). Phase-in requirements for overfill prevention for APSTs on EAP
- R311-203-5(10)(f). Phase-in requirements for automatic line leak detection for APSTs on EAP

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

- Changed title of R311-204 to Petroleum Storage Tanks: Closure and Remediation
- R311-204-2(1)(a). Changed UST to PST to indicate that APSTs are subject to permanent closure notification requirements
- R311-204-3(2)(e). Defined requirements for reuse of an APST
- R311-204-4(2). Added requirements for submitting a Closure Notice for APSTs

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

- Change title of R311-205 to Petroleum Storage Tanks: Site Assessment Protocol and Release Reporting
- R311-205-2(1). Added site assessment or site check requirements for USTs and APSTs
- R311-205-2(1). Added notification to local emergency responders of a spill or overfill exceeding 25 gallons
- R311-205-3. Added sampling requirements for remote fills
- R311-205-3. Changed sampling protocol for product dispensers

### **R311-206 Underground Storage Tanks: Certificate of compliance and Financial Assurance Mechanism**

- Changed title R311-206 to Petroleum Storage Tanks: Certificate of compliance and Financial Assurance Mechanism.
- R311-206-2(1). Owners and operator must declare Financial Assurance Mechanism.
- R311-206-3(1)(g). Added requirement for as-built drawings or site plats for new and existing PST sites.
- R311-206-3(2)(a). Initial requirements for an APST to receive a certificate of compliance to include: tank tightness tests, line tightness tests, site plats, spill, previous pollution incident report, and financial responsibility.
- R311-206-3(2)(b). Added phase in requirements for APSTs starting July 1, 2026 which includes: cathodic protection, overfill, line leak detector and secondary containment.
- R311-206-6. Changed title to Voluntary Admission of Eligible exempt Underground Petroleum Storage Tanks and eligible exempt aboveground storage tanks containing petroleum to the Environmental Assurance Program.
- R311-206-6(2). Defined eligible exempt ASTs participation in the EAP
- R311-206-8(3). Added requirements for delivery prohibition for APSTs
- R311-206-11(8). Environmental Assurance Program Risk Rebate does not apply to APSTs until July 1, 2026

### **R311-207 Accessing the Petroleum Storage Tank fund for Leaking Petroleum Storage Tanks**

- R311-207-2(5). Clarified the reimbursement percentages for new and historic releases

### **R311-208, Underground Storage Tank Penalty Guidance**

- Changed title R311-208 to Petroleum Storage Tank Penalty Guidance
- R311-208-2. Change title to Petroleum Storage Tank Penalty Criteria

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

- Change title R311-211 to Corrective Action Cleanup Standards Policy-PST and CERCLA Sites

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

- Change title R311-212 to Administration of the Petroleum Storage Tank Fund Loan Program
- Made several minor clarifications of terms in the rule.

The tentative adoption schedule for the proposed rule changes is:

Request for comments from PST Stakeholders	March and April 2022
Request for Board approval for publication and public comment	May 12, 2022
Publication in the Utah State Bulletin	June 1, 2022
Public comment period	June 1 – July 1, 2022
Public hearing (date tentative)	June 15, 2022
Board approval for final adoption	July 14, 2022
Final effective date of new rules	September 29, 2021

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-200</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-200. Underground Storage Tanks: Definitions.
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs), and required Waste Management and Radiation Control Board to define specific terms in rule.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Defined "Historic contamination", "New releases", "Agricultural operations", and "Historic contamination" which was required by additions to the Underground Storage Tank (UST) Act. Added abbreviations of certain terms found in rule. Clarified terms found in rule and statute such as "In service", "Rests directly on the ground" and "Soil".

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have any fiscal impacts on small business revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule change is not expected to have any fiscal impacts on non-small business revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Any cost or benefits to affected persons relating to defined terms will be addressed in the relevant rule.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

No fiscal impacts on businesses are expected. Any impact would be found in the other rules to which the definitions apply.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-403	

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	

<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 07/01/2022

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

**10. This rule change MAY become effective on** (mm/dd/yyyy): 09/29/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

**To the agency:** 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 *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy):	05/15/2022
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-200. [Underground]Petroleum Storage Tanks: Definitions.**

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

(1) Terms used in this rule are defined in Section 19-6-402.

(2) In addition, for purposes of this rule:

(a) Aboveground petroleum storage tank" or "APST" means a storage tank that is, by volume, less than 10 % buried in the ground, including the pipes connected to the storage tank and:

(i) has attached underground piping; or

(ii) rests directly on the ground;

(A) contains regulated substances;

(B) has the capacity to hold 501 gallons or more; and

(iii) is not:

(A) used in agricultural operations, as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(B) used for heating oil for consumptive use on the premises where stored;

(C) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(D) directly related to oil or gas production and gathering operations; or

(E) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102.

~~(a)~~b) "Actively participated" for ~~the purpose of~~ the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

~~(b)~~c) "Agricultural operation" means any operation on a tract of land devoted to the production of crops, animals, or fowl; fruit or vegetable products; or the production of dairy, nuts, tobacco, nursery, or floral products.

~~(b)~~d) "As-built drawing" for ~~the purpose of~~ notification means a drawing to scale of newly constructed ~~USTs~~PSTs. The ~~USTs~~PSTs shall be referenced to buildings, streets, and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size must be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

~~(e)~~e) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the ~~UST~~PST system.

~~(d)~~f) "Certificate" means a document that evidences certification.

~~(e)~~g) "Certification" means approval by the director or the ~~B~~board to engage in the activity applied for by the individual.

~~(g)~~h) "Certified ~~E~~environmental ~~L~~laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for ~~UST~~PST sampling in Subsection R311-205-2(5).

~~(f)~~i) "Certified sampler" is the person who performs environmental media sampling for compliance with Utah ~~UST~~PST rules.

~~(h)~~j) "Change-in-service" means the continued use of an ~~UST~~PST to store a non-regulated substance.

~~(i)~~k) "Claimant" means any person eligible to submit requests for reimbursement of costs against the Petroleum Storage Tank ~~Trust~~ Fund as determined by the director.

~~(j)~~l) "Community water system" means a public water system that serves at least ~~fifteen~~15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

~~(k)~~m) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted ~~for the purpose of determining~~to determine the extent and degree of contamination.

~~(l)~~n) "Consultant" is a person who is a certified ~~UST~~PST consultant according to Subsection 19-6-402(7) and Section R~~-~~311-201-2.

~~(m)~~o) "Cost Guidelines" refers to the Cost Guidelines for Utah Underground Storage Tank Sites document, dated June 3, 2021. This document contains personnel classifications, requirements, and rates, general tasks and responsibilities for personnel, maximum allowable equipment and laboratory rates, and specific items or activities that will and will not be reimbursed by the Petroleum Storage Tank Fund.

~~(n)~~p) "Customary, reasonable, and legitimate expenses" means costs incurred during the investigation, abatement, and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

~~(o)~~q) "Customary, reasonable, and legitimate work" means work for investigation, abatement, and corrective action that ~~is required to~~shall reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and ~~taking into account~~considering current or probable land use as determined by the director following the criteria in Rule R311-211.

~~(p)~~r) "Department" means the Utah Department of Environmental Quality.

(s) "EAP" means the Environmental Assurance Program established in Section 19-6-410.5.

([e]t) "Eligible exempt UST" for ~~[the purpose of]~~ eligibility for the ~~[Utah]~~ Petroleum Storage Tank ~~[Trust]~~ Fund means a tank specified in Subsection 19-6-415(1).

([f]u) "Environmental media sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for ~~[the purpose of]~~ evaluating environmental contamination.

([s]v) "EPA" means the United States Environmental Protection Agency.

([t]w) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the director.

([u]x) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

([v]y) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of ~~[an UST]~~ PST.

([w]z) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(aa) "Historic contamination" as referenced in Subsections 19-6-428(3)(c) and 19-6-428(3)(d) is petroleum contamination:

(i) reported after the start of continuous participation in the EAP that has no apparent cause or source and for which the director reasonably determines to have occurred during a period of non-participation; or

(ii) a release which does not meet the definition of a new release.

([x]bb) "Injury or damage[s] from a release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in Subsection R311-211-6(1).

(cc) "In service" means an PST that is actively storing or dispensing regulated substances.

([y]dd) "In use" means that an operational, inactive, or abandoned ~~[UST]~~PST contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to the safety of human health or the environment, as determined by the director.

([z]ee) "Lapse" in reference to the certificate of compliance and coverage under the ~~[Environmental Assurance Program]~~EAP, means to terminate automatically.

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

(gg) "New release" as referenced in Subsections 19-6-428(3)(c) and 19-6-428(3)(d) are releases that occur on or after the start date for continuous participation in the EAP, which the director reasonably determines to have occurred due to an unusual operating condition, an apparent PST system equipment failure, a failed PST test, an overflow, or a surface spill during the time of program participation.

([bb]hh) "No ~~[F]~~ further ~~[A]~~ action determination" means that the director has evaluated information provided by responsible parties or others about the site and determined that any detectable petroleum contamination from a particular release does not present a threat to public health or the environment based upon ~~[B]~~ board established criteria in Title R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

([ee]ii) "Occurrence" in reference to Section R311-208-4 means a separate petroleum fuel delivery to a single tank.

([dd]jj) "Owners and operators" means either an owner or operator, or both owner and operator.

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

([ff]ll) "Permanently closed" means ~~[UST]~~PSTs that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Rule R311-202.

~~[(gg) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Subsection 19-6-402(21).]~~

([hh]mm) "Petroleum storage tank fee" means the fee which ~~[capitalizes]~~ funds the Petroleum Storage Tank ~~[Trust]~~ Fund as established in Section 19-6-409.

([ii]nn) "Petroleum Storage Tank ~~[Trust]~~ Fund" means the Fund created by Section 19-6-409.

([jj]oo) "Potable drinking water well" means any hole, ~~[dug, driven, drilled, or bored]~~, that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or

otherwise supplies water for household use, [({}consisting of drinking, bathing, and cooking, or other similar uses[})]. Such a well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(pp) "PST" means petroleum storage tank as defined in Subsection 19-6-402(21).

([zz]qq) "PST inspection" is the inspection required by state and applicable federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated PSTs.

([bbb]rr) "PST installation" means the installation of a PST, including any component that is critical to:

(i) the integrity of the system;

(ii) protection of the environment; and

(iii) qualifying for a certificate of compliance.

(ss) "PST testing" means:

(i) a testing method which can detect leaks in a PST system;

(ii) testing for compliance with corrosion protection requirements;

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

(iv) any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the EAP; or

(v) testing methods that meet applicable performance standards:

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

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

(C) 40 CFR 280.31(b) for cathodic protection testing;

(D) 40 CFR 280.35(a)(2) for overfill device inspection;

(E) 40 CFR 280.40(a)(3) for testing of mechanical and electronic release detection components; and

(F) interstitial testing for tank and piping secondary containment.

([kk]tt) "Public water system" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least [fifteen]15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

([H]uu) "Registration fee" means [UST]PST registration fee.

([mm]vv) "Related parties" for the purposes of Section R311-207-4, means organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(ww) "Reportable release" means a spill, overfill, leak, discharge, leachate, or disposal of a regulated substance that results in a release to the environment.

(xx) "Rests directly on the ground" means that at least some portion of a PST situated aboveground is in direct contact with soil.

([nn]yy) "Secondary containment"

(i) for the purposes of Rule R311-202 and Section R311-203-6, means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space must meet the requirements of 40 CFR 280.43(g).

(ii) for the purposes of Subsection R311-206-4(6), means a dike, vault, enclosure, berm, double-walled system, or any other barrier that meets the secondary containment standards listed in the International Fire Code (IFC) 2306.5 and 5704.2.10.

([øø]zz) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained [an-UST]a PST.

([pp]aaa) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, incorporating 40 CFR 280 Subparts E and F.

([qq]bbb) "Site investigation" is work performed by the owner or operator, or their designee, when gathering information for reports required for Utah [UST]PST rules.

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

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

- (i) fire and explosion hazards have been abated;
- (ii) free flow of the product out of the tank has been stopped;
- (iii) free product is being removed from the soil, groundwater, or surface water according to a work plan or corrective action plan approved by the director, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6);
- (iv) alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release; and
- (v) a soil or groundwater management plan or both have been submitted for approval by the director.

([tt]eee) "Soil" as referenced in Subsection 19-6-402(28) means natural earthen material under which there is no secondary containment.

([uu]fff) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

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

([ww]iii) "Suspected release" means a release that may have occurred from a regulated PST system, for example: petroleum contamination discovered at the PST site or in the surrounding area; unusual operating conditions of the PST system; release detection methods indicating a release may have occurred; inventory control records indicating unexplained product loss; or, a spill or overfill that occurs outside secondary containment and exceeds 25 gallons.

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

([yy]iii) "Third-party Class B operator" is any individual who is not the facility owner or operator, or an employee of the owner or operator and who, by contract, provides the services outlined in Subsection R311-201-12(7).

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

([aa]yy) "~~UST registration fee~~" means the fee assessed by Section 19-6-408 on tanks located in Utah.

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

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

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

- (i) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;
- (ii) vent and product piping assembly;
- (iii) cathodic protection installation, service, and repair;
- (iv) internal lining;
- (v) secondary containment construction; and
- (vi) UST repair and service.

(~~eee~~mmm) "UST installation permit fee" means the fee established by Subsection 19-6-411(2)(a)(ii).

(~~ddd~~nnn) "UST installer" means an individual who engages in [~~underground storage tank~~]PST installation.

(~~eee~~ooo) "UST removal" means the removal or permanent closure of [~~an underground storage tank~~]a PST system by taking out of service all or part of [~~an underground storage tank~~]a PST system.

(~~fff~~ppp) "UST remover" means an individual who engages in [~~underground storage~~]PST tank removal.

(~~ggg~~qqq) "UST tester" means an individual who engages in [~~underground storage tank~~]PST testing.

(~~hhh~~) "UST testing" means:

- ~~— (A) a testing method which can detect leaks in an underground storage tank system;~~
- ~~— (B) testing for compliance with corrosion protection requirements;~~
- ~~— (C) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components; or~~
- ~~— (D) any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.~~
- ~~(ii) testing methods must meet applicable performance standards:~~
  - ~~(A) 40 CFR 280.40(a)(4), 280.43(e), and 280.44(b) for tank and product piping tightness testing;~~
  - ~~(B) 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping;~~
  - ~~(C) 40 CFR 280.31(b) for cathodic protection testing;~~
  - ~~(D) 40 CFR 280.35(a)(2) for overfill device inspection;~~
  - ~~(E) 40 CFR 280.40(a)(3) for testing of mechanical and electronic release detection components; and~~
  - ~~(F) interstitial testing for tank and piping secondary containment.~~

**KEY: petroleum, underground storage tanks**

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-201</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs), This rule clarifies applicability of certain UST certifications to include work performed on aboveground petroleum storage tanks (APSTs)
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Changed title of R311-201 to Petroleum Storage Tanks: Certification Programs and UST Operator Training. The term Underground storage tanks (USTs) was changed to petroleum storage tanks (PSTs) where necessary to reflect enacted changes to the Underground Storage Tank Act.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because the state does not employ PST certified individuals.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because local governments do not employ PST certified individuals.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is expected to have a direct fiscal cost to small businesses because testing companies may choose to hire additional certified individuals to meet testing demands. Since we cannot predict behavior, the actual cost to small businesses is inestimable.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule change is expected to have a direct fiscal cost to non-small businesses because testing companies may choose to hire additional certified individuals to meet testing demands. Since we cannot predict behavior, the actual cost to non-small businesses is inestimable.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Other persons may have a direct benefit to this rule if they are hired and trained by the small and non-small businesses. This benefit is unknown because we cannot predict how many individuals would be hired by these businesses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule change is expected to have a direct fiscal cost to affected persons who choose to be PST certified. There is a certification fee of approximately \$225. It is not possible to predict how many individuals will choose to become certified.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule will only impact businesses who employ PST certified individuals.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-1-301	Section 19-6-403	Section 63G-4-503
Section 19-6-105	Section 63G-4-102	
Section 19-6-402	Sections 63G-4-201 through 205	

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

#### Public Notice Information

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 07/01/2022

**B) A public hearing (optional) will be held: MASOB 195 North 1950 West, Salt Lake City, Utah**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	2:00 PM.	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

**10. This rule change MAY become effective on** (mm/dd/yyyy): 09/29/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

#### Agency Authorization Information

**To the agency:** 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 *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy):	05/15/2022
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### R311. Environmental Quality, Environmental Response and Remediation.

#### R311-201. [Underground]Petroleum Storage Tanks: Certification Programs and UST Operator Training.

##### R311-201-1. Definitions.

Definitions are found in Rule R311-200.

##### R311-201-2. Requirement for Certification.

(1) a certified [UST]PST consultant is required as specified in Subsection 19-6-402(7)(b).

(a) no person shall provide or contract to provide the following services without having certification to conduct these activities:

- (i) provide information, opinions, or advice relating to [UST]PST release management;
- (ii) abatement;

- (iii) investigation;
  - (iv) corrective action; or
  - (v) evaluation for a fee, or in connection with the services for which a fee is charged.
- (A) R311-204-5(2); and
- (B) except for releases from a hazardous substance [UST]PST system, as defined in 40 CFR 280.10.
- (b) a certified [UST]PST consultant must:
- (i) make pertinent project management decisions;
  - (ii) ensure all aspects of ~~[petroleum storage tank related]~~ work related to PSTs containing petroleum are performed in an appropriate manner; and
  - (iii) sign ~~[all]~~required documentation to be submitted to the director for work performed.
- (c) any [UST]PST release abatement, investigation, or corrective action work performed by a person who is not certified or who is not working under the direct supervision of a certified [UST]PST consultant, and is performed for compliance with Utah [UST]PST rules, may be rejected by the director.
- (2) UST inspector. No person shall conduct ~~[an UST]~~a PST inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct such activities.
- (a) the director may issue a limited certification restricting the type of [UST]PST inspections the applicant can perform.
- (3) UST tester. No owner or operator shall allow [UST]PST testing to be conducted on ~~[an UST]~~a PST under their ownership or operation unless the person conducting the [UST]PST testing is certified according to Rule R311-201.
- (a) except as outlined in ~~[Subs]~~Section[s] R311-201-~~[2(e)(2)]~~3 ~~[and R311-201-2(e)(3)]~~, no person shall conduct [UST]PST testing without having certification to conduct such activities.
- (b) an individual certified under Rule R311-201 as a UST installer may:
- (i) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;
  - (ii) perform an overfill device inspection to meet the requirements of 40 CFR 280.35(a)(2);
  - (iii) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i), 280.40(a)(3)(ii), 280.40(a)(3)(iv), and 280.40(a)(3)(v); and
  - (iv) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.
- (c) a [UST]PST owner or operator may:
- (i) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used; and
  - (ii) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.
- (d) certification by the director under this rule applies only to the specific [UST]PST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by equivalent training as determined by the director, for the following types of testing:
- (i) tank, line, and leak detector testing;
  - (ii) interstitial tests of tanks and piping; and
  - (iii) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.
- (e) the director may issue a limited certification restricting the type of [UST]PST testing the applicant can perform.
- (4) Certified sampler. No person shall conduct environmental media sampling for determining levels of contamination which may have occurred from regulated [USTs]PSTs without having certification to conduct these activities.
- (a) no owner or operator shall allow any environmental media sampling for determining levels of contamination which may have occurred from regulated [USTs]PSTs to be conducted on a tank under their

ownership or operation unless the person conducting the environmental media sampling is certified according to Rule R311-201.

(5) UST installer. No person shall install a [UST]PST without having certification or the on-site supervision of an individual having certification to conduct these activities.

(a) no owner or operator shall allow the installation of a [UST]PST, or any component thereof, under their ownership or operation unless the person installing the [UST]PST is certified according to Rule R311-201.

(b) the director may issue a limited certification restricting the type of [UST]PST installation the applicant can perform.

(6) UST remover. No person shall remove a [UST]PST without having certification or the on-site supervision of an individual having certification to conduct these activities.

(a) no owner or operator shall allow the removal of a [UST]PST, or any component thereof, under their ownership or operation unless the person conducting the [UST]PST removal is certified according to Rule R311-201.

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

(1) Certified [UST]PST consultant.

(a) training. For initial and renewal certification, an applicant must meet:

(i) Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law; and

(ii) within a six-month period ~~[prior to]~~ before application, complete an approved training course or equivalent in a program approved by the director to provide training to include the following areas:

(A) state and federal statutes;

(B) rules and regulations;

(C) environmental media sampling; and

(D) department policies.

(b) experience. Each applicant must provide with the application a signed statement or other evidence demonstrating:

(i) three years, within the past seven years, of appropriately related experience in [UST]PST release abatement, investigation, and corrective action; or

(ii) an equivalent combination of appropriate education and experience, as determined by the director.

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

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

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

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

(d) initial certification examination. Each applicant who is not certified pursuant to Section R311-201-4 must successfully pass an initial certification examination or equivalent, administered under the direction of the director.

(i) the director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-3(1)(a).

(e) renewal certification examination. Certified [UST]PST consultants seeking to renew their certification pursuant to Section R311-201-5 must successfully pass a renewal certification examination, or equivalent administered under the direction of the director.

(i) the director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-3(1)(a).

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) examination for revoked or expired certification. Any applicant who is not a certified [UST]PST consultant on the date the renewal certification examination is given because the consultant's prior certification was revoked or expired ~~[prior to]~~before completing a renewal application, must successfully pass the initial certification examination administered under Subsection R311-201-3(1)(d).

(2) UST inspector.

(a) training. For initial certification, an applicant must have successfully completed a [UST]PST inspector training course or equivalent within the six-month period ~~[prior to]~~before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) corrosion;
- (B) geology;
- (C) hydrology;
- (D) tank handling;
- (E) tank testing;
- (F) product piping testing;
- (G) disposal;
- (H) safety;
- (I) sampling methodology;
- (J) state site inspection protocol;
- (K) state and federal statutes; and
- (L) Utah [UST]PST rules and regulations.

(ii) renewal certification training will be established by the director.

(iii) the applicant must provide documentation of training with the application.

(b) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(2)(a), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(3) UST tester.

(a) financial assurance. An applicant or applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers [UST]PST testing and which, in combination, represent an unencumbered value of the largest [UST]PST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater.

(i) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the certification application.

(b) training. For initial certification, an applicant must complete a [UST]PST tester's training course within the six-month period ~~[prior to]~~before application, in a program approved by the director, to provide training to include applicable and related areas of state and federal statutes, rules, and regulations.

(i) renewal certification training will be established by the director.

(A) the applicant must provide documentation of training with the application.

(ii) for initial certification to perform the types of testing specified in Subsection R311-201-2(3)~~(c)~~, an applicant must have successfully passed a training course conducted by the manufacturer of the [UST]PST testing equipment that they will be using, or a training course determined by the director to be equivalent to the manufacturer training, in the correct use of the equipment and testing procedures required to operate the [UST]PST test system.

(iii) an applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the [UST]PST testing equipment that they will be using, or training as determined by the director to be equivalent to the manufacturer training, in the correct use of the equipment and testing procedures required to operate the [UST]PST test system.

(A) for renewal certification, refresher training, or equivalent must be completed within one year [~~prior to~~]before the expiration date of the certificate.

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

(c) performance standards of equipment. An applicant must submit documentation that demonstrates the [~~UST~~]PST testing equipment used by the applicant meets the performance standards specified in Subsection R311-200-1(2)[~~(hh)(ii)~~](ss)(v).

(i) this documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the director and submitted at the time of application for certification.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(3)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(4) Certified sampler.

(a) training. For initial certification an applicant must successfully complete a petroleum storage tank environmental media sampler training course or equivalent within the six-month period [~~prior to~~]before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) chain of custody;
- (B) decontamination;
- (C) EPA testing methods;
- (D) environmental media sampling protocol;
- (E) preservation of samples during transportation;
- (F) coordination with Utah certified laboratories; and
- (G) state and federal statutes, rules, and regulations.

(ii) renewal certification training will be determined by the director.

(A) the applicant shall provide documentation of training with the application.

(b) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-3(4)(a), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(5) UST installer.

(a) financial assurance. An applicant or the applicant's employer must have insurance, surety bonds, liquid company assets, or other appropriate kinds of financial assurance which covers [~~UST~~]PST installation and which, in combination, represents an unencumbered value of not less than the largest [~~UST~~]PST installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) evidence of financial assurance shall be provided with the application.

(ii) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the application.

(b) training. For initial certification, an applicant must have successfully completed a [~~UST~~]PST installer training course or equivalent within the six-month period [~~prior to~~]before the application.

(i) the training course must be approved by the director, and shall include instruction in the following areas:

- (A) tank installation;
- (B) pre-installation tank testing;
- (C) product piping testing;
- (D) excavation;
- (E) anchoring;
- (F) backfilling;
- (G) secondary containment;
- (H) leak detection methods;
- (I) piping;
- (J) electrical; and
- (K) state and federal statutes, rules, and regulations.

(ii) the applicant must provide documentation of training with the application.

(c) experience. Each applicant must provide with their application a sworn statement or other evidence that they have actively participated in a minimum of three [UST]PST installations.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(5)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) UST remover.

(a) financial assurance. An applicant or the applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers [UST]PST removal and which, in combination, represents an unencumbered value of not less than the largest [UST]PST removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) evidence of financial assurance shall be provided with the application.

(ii) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the application.

(b) training. For initial certification, an applicant must have successfully completed a [UST]PST remover approved training course or equivalent within the six-month period ~~[prior to]~~ before the application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) tank removal;
- (B) tank removal safety practices; and
- (C) state and federal statutes, rules, and regulations.

(ii) the applicant must provide documentation of training with the application.

(c) experience. Each applicant must provide with their application a sworn statement or other evidence that they have actively participated in a minimum of three [UST]PST removals.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(6)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

#### **R311-201-4. Application for Certification.**

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

- (a) meets applicable eligibility requirements specified in Section R311-201-3; and

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

(2) Applications submitted under Subsection R311-201-4~~(a)~~(1) shall be reviewed by the director for determination of eligibility for certification.

(a) if the director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the standards described in Section R311-201-6, the director shall issue to the applicant a certificate.

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

(a) certificates shall be subject to periodic renewal pursuant to Section R311-201-5.

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

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

(a) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the applicable performance standards specified in Section R311-201-6;

(b) paying any applicable fees; and

(c) passing a certification renewal examination.

(2) If the director determines that the applicant meets the applicable eligibility requirements of Section R311-201-3 and the applicable performance standards of Section R311-201-6, the director shall reissue the certificate to the applicant.

(3) Renewal certificates shall be issued for a period equal to the initial certification period and shall be:

(a) subject to inactivation under Section R311-201-8; and

(b) subject to revocation under Section R311-201-9.

(4) Any applicant who has a certification which has been revoked or expired for more than two years ~~prior to~~ before submitting a renewal application must successfully satisfy the training and certification examination requirements for initial certification under Section R311-201-3 for the applicable certificate before receiving the renewal certification.

(a) except as provided in Subsection R311-201-3(1)(f) for certified ~~UST~~ PST consultants.

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

(1) Individuals who are certified in accordance with Rule R311-201 must:

(a) display the certificate upon request;

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

(c) report the discovery of any release caused by or encountered in the course of performing the ~~UST~~ PST activity for which certification is granted to the director, the local health district, and the local public safety office within 24 hours.

(i) certified ~~UST~~ PST consultants and certified ~~groundwater and soil~~ samplers must report the discovery of any release caused by or encountered in the course of performing environmental media sampling for compliance with Utah ~~UST~~ PST rules, or report the results indicating that a release may have occurred, to the director, the local health district, and the local public safety office within 24 hours.

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

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

(2) The director may audit or commission an~~e~~ audit of records which support eligibility for certification, or performance of work for which certification is granted, at any time.

(a) audits may be determined by random selection or for specific reasons, including suspicion or discovery of inaccuracies on an application for certification or performance of substandard work for which certification is granted, or deficiencies in complying with regulations.

(3) Certified individuals must, in addition to meeting the performance standards in Subsection R311-201-6(1), comply with the following:

(a) certified [UST]PST consultant. An individual who provides [UST]PST consulting services in the [S]state [of Utah] must:

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

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

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

(iv) review and certify by signature any documentation submitted to the director in accordance with [UST]PST release-related compliance; and

(v) ensure and certify by signature [aH] pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a certified [UST]PST consultant.

(b) UST inspector. An individual who performs [UST]PST inspecting for the Division of Environmental Response and Remediation shall:

(i) conduct inspections of [USTs]PSTs and records to determine compliance with this rule only as authorized by the director.

(c) UST tester. An individual who performs [UST]PST testing in the [S]state [of Utah] must:

(i) perform [aH] work in a manner that does not cause a release of the contents of the tank;

(ii) assure that [aH] operations of [UST]PST testing which are critical to the integrity of the system and to the protection of the environment are supervised by a certified person; and

(iii) perform work in a manner that the integrity of the [UST]PST system is maintained.

(d) UST installer. An individual who performs [UST]PST installation or repair in the State of Utah must:

(i) be certified to assure the proper installation of all elements of [UST]PST systems which are critical to the integrity of the system and to the protection of the environment, including:

(A) pre-installation tank testing;

(B) tank site preparation including anchoring, tank placement, and backfilling;

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

(D) vent and product piping assembly;

(E) fill tube attachment;

(F) installation of tank manholes;

(H) secondary containment construction; and

(ii) notify the director as required by Subsection R311-203-[4(1)]3(1) before installing or upgrading an [UST]PST.

(e) UST remover. An individual who performs [UST]PST removal in the [S]state [of Utah] must:

(i) assure that [aH] operations of tank removal which are critical to safety and to the protection of the environment which includes:

(A) removal of soil adjacent to the tank;

(B) disassembly of pipe;

(C) final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site must be supervised by a certified person; and

(ii) not proceed to close a regulated [UST]PST without an approved closure plan, except as outlined in Subsection R311-204-2(2).

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

(1) Any individual whose application or renewal application for certification or certification renewal is denied will be provided with a written documentation by the director specifying the reason or reasons for denial.

(a) an applicant may appeal the determination using the procedures specified in Section 19-1-301.5, et seq., and Rule R305-7.

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

(1) If an applicant was certified based upon their employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer.

(2) If the employer loses their financial assurance or the applicant leaves the employer, their certification will automatically be deemed inactive and they will no longer be certified for purposes of this rule.

(3) Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees.

(4) Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

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

(1) Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-3 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked.

(a) procedures for revocation are specified in Rule R305-7.

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

(1) If the director determines that another state's certification program is equivalent to the certification program referred to in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, the director may issue a Utah certificate.

(a) The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-4(3), whichever occurs first.

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

(1) To meet the operator training requirement ~~{(42 USC Section 6991i)}~~ of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility must have UST facility operators that are trained and registered according to the requirements of this section.

(2) Each facility must have three classes of operators: A, B, and C.

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

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

(3) The UST owner or operator must provide documentation to the director to identify the Class A, B, and C operators for each facility.

(a) if an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all applicable state and federal statutes, rules, and regulations.

(4) New Class A and B operators must be trained and registered within 30 days of assuming responsibility for an UST facility.

(5) New Class C operators must be trained before assuming the responsibilities of a Class C operator.

(6) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(6)(b).

(a) the Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator must:

(i) have a general knowledge of UST systems;

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

(iii) ensure that yearly UST fees are paid;

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

(v) make financial responsibility documents available to the director as required; and

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

(b) an owner or operator may designate a [~~third party~~]third-party Class B operator as a Class A operator if:

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

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

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

(7) The Class B operator must implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems.

(a) the Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator must:

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

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

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

(iv) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(7)(iii), if it is not reported as a suspected release according to 40 CFR 280.50;

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

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

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

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

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

(8) Any individual providing services as a third-party Class B operator must be trained and registered in accordance with Subsection R311-201-12(10) and must:

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

(i) a UST tester; or

(ii) a UST installer as either a general installer or a service or repair technician; or

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

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

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

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

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

(d) notify Class A operators, Class B operators, or both, and appropriate emergency responders when necessary; and

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

(10) Operator training and registration.

(a) training and testing.

(i) applicants for Class A and B operator registration must successfully complete an approved operator training course within the six-month period [~~prior to~~]before application.

(ii) the training course must be approved by the director, and shall include instruction in the following:

(A) notification;

(B) temporary and permanent closure;

(C) installation permitting;

(D) UST requirements of the 2005 Energy Policy Act;

(E) Class A, B, and C operator responsibilities;

- (F) spill prevention;
- (G) overfill prevention;
- (H) UST release detection;
- (I) corrosion protection;
- (J) record[-]keeping requirements;
- (K) emergency response;
- (L) product compatibility;
- (M) Utah [~~UST~~]PST rules and regulations;
- (N) UST financial responsibility; and
- (O) delivery prohibition.

(iii) applicants for Class A and B operator registration must successfully pass a registration examination authorized by the director.

(A) the director shall determine the content of the examination.

(iv) an individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(10)(a)(i) and R311-201-12(10)(a)(iii) by completing the following within the six-month period [~~prior to~~]before application:

(A) successfully passing a nationally recognized UST operator examination approved by the director; and

(B) successfully passing a Utah [~~UST~~]PST rules and regulations examination authorized by the director.

(v) the director shall determine the content of the examination.

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

(b) registration application.

(i) applicants for Class A and B operator registration must:

(A) submit a registration application to the director;

(B) document proper training; and

(C) pay any applicable fees.

(ii) Class C operators shall be designated by a Class B operator.

(iii) the Class B operator must maintain a list identifying the Class C operators for each [~~UST~~]PST facility.

The list must identify:

(A) each Class C operator;

(B) the date of training; and

(C) the trainer.

(iv) identification on the list serves as the operator registration for Class C operators.

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

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

(c) renewal of registration.

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

(A) submitting a completed application form;

(B) paying any applicable fees; and

(C) documenting successful completion of any re-training required by Subsection R311-201-12(10)(d).

(ii) if the director determines that the operator meets [~~all~~] the requirements for registration, the director shall renew the applicant's registration for a period equal to the initial registration.

(iii) any applicant for renewal who has a registration that has been expired for more than two years [~~prior to~~]before submitting a renewal application must successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(10)(a) before receiving the renewal registration.

(d) re-training.

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

- (A) lapsing of certificate of compliance;
  - (B) failure to provide acceptable financial responsibility; or
  - (C) failure to ensure that Class B and C operators are trained and registered.
- (ii) a Class B operator is subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:
- (A) failure to document compliance, as determined by the Technical Compliance Rate;
  - (I) Technical Compliance Rate is determined using the EPA "UST and LUST Performance Definitions as of October 2018" and incorporated [~~herein~~] by reference.
  - (B) failure to perform UST operator inspections required by Section R311-203-7; or
  - (C) failure to ensure that Class C operators are trained and registered, and are on site during operating hours.
- (iii) to be re-trained, Class A and Class B operators must successfully complete the appropriate Class A or B operator training course and examination, or must complete an equivalent re-training course and examination approved by the director.
- (iv) Class A and B operators must be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the director within 30 days of the re-training.
- (A) if the documentation is not received by the director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse.
- (B) to re-register, the operator shall meet the requirements of Subsections R311-201-12(10)(a) and R311-201-12(10)(b).
- (v) if a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsection[s] R311-201-12(10)(d)(i) or R311-201-12(10)(d)(ii), re-training is not required if the Class A or B operator successfully completes and documents re-training under Subsection R311-201-12(10)(d) for a prior determination of non-compliance that occurred during the previous nine months.
- (11) Reciprocity.
- (a) if the director determines that another state's operator training program is equivalent to the operator training program provided in this rule, [~~he~~the director] may accept an applicant's Class A or Class B registration application, provided that the applicant:
- (i) submits a completed application form;
  - (ii) passes the Utah [~~UST~~]PST rules and regulations examination referenced in Subsection R311-201-12(10)(a)(iv)(B); and
  - (iii) submits payment of any applicable registration fees.
- (b) the Class A or Class B registration is valid until the Utah registration expiration described in Subsection R311-201-12(10)(b)(vi).

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

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-203</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-203. Underground Storage Tanks: Technical Standards.
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs).
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Added requirements for notification for APSTs found in Subsection 19-6-407(2). For owners and operators who participate in the environmental assurance program (EAP), added leak detection and testing requirements for APSTs to meet the requirements for issuance of a certificate of compliance (Section R311-206-3). For owners and operators who participate in the EAP, added phase-in timeline to minimize financial impact for APST owners to meet certain standards.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Section R311-203-2. The fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to SB40 in the 2021 legislative general session as required in 19-6-407(2)(b). Qualified APSTs last used before May 5, 2021 must notify but are not subject to this fee.
Section R311-203-4. This rule change is expected to have a fiscal cost on the approximately 38 state owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total cost for all these facilities was estimated in the fiscal note attached to SB40 in the 2021 legislative general session.
Section R311-203-4. This rule change is expected to have fiscal benefit on the state government, DEQ-DERR, because the number of PST registration fees collected per year will increase. This benefit is inestimable because it is unknown how many PST systems will be registered.
Section R311-203-5. This rule change is not expected to have a fiscal impact on the state government's fleet services APST sites because these sites already meet the requirements set forth in the rule.

**B) Local governments:**

Section R311-203-2 The fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to SB40 in the 2021 legislative general session as required in 19-6-407(2)(b). Qualified APSTs last used before May 5, 2021 must notify but are not subject to this fee.

Section R311-203-4. This rule change is expected to have a fiscal cost on the approximately 200 local government owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total was estimated in the fiscal note attached to SB40 in the 2021 legislative general session.

Section R311-203-5. There is a direct fiscal cost to local governments owned facilities with APSTs. There are approximately 160 sites owned by local government that will participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total cost for all these facilities combined is \$96,000 per year for FY23. This cost will decrease to \$48,000 FY24 and FY25. The cost per facility will increase FY26 due to the phase-in of additional requirements needed by FY27. The FY26 fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

This estimate was reached using the average contractor cost for a facility with 3 APSTs; spill bucket testing (\$300/facility, every 3 years) and line tightness testing (\$300/facility, annually).

**C) Small businesses ("small business" means a business employing 1-49 persons):**

Section R311-203-2 The fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to SB40 in the 2021 legislative general session as required in 19-6-407(2)(b). Qualified APSTs last used before May 5, 2021 must notify but are not subject to this fee.

Section R311-203-4. This rule change is expected to have a fiscal cost on the approximately 200 small business owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total cost for all these facilities was estimated in the fiscal note attached to SB40 in the 2021 legislative general session.

Section R311-203-5. There is a direct fiscal cost to small business owned facilities with APSTs. There are approximately 160 sites owned by small business that will participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total cost for all these facilities combined is \$96,000 per year for FY23. This cost will decrease to \$48,000 FY24 and FY25. The cost per facility will increase FY26 due to the phase-in of additional requirements needed by FY27. The FY26 fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

This estimate was reached using the average contractor cost for a facility with 3 APSTs; Tank Tightness testing (\$900/facility, FY23 only), spill bucket testing (\$300/facility, every 3 years) and line tightness testing (\$300/facility, annually).

**D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**

Section R311-203-2 The fiscal impact of the one-time \$250 processing fee was estimated in the fiscal attached to SB40 in the 2021 legislative general session as required in 19-6-407(2)(b). Qualified APSTs last used before May 5, 2021 must notify but are not subject to this fee.

Section R311-203-4. This rule change is expected to have a fiscal cost on the approximately 200 non-business owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total cost for all these facilities was estimated in the fiscal note attached to SB40 in the 2021 legislative general session.

Section R311-203-5. There is a direct fiscal cost to non-small business owned facilities with APSTs. There are approximately 160 sites owned by non- small business that will participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total cost for all these facilities combined is \$96,000 per year for FY23. This cost will decrease to \$48,000 FY24 and FY25. The cost per facility will increase FY26 due to the phase-in of additional requirements needed by FY27. The FY26 fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

This estimate was reached using the average contractor cost for a facility with 3 APSTs; spill bucket testing (\$300/facility, every 3 years) and line tightness testing (\$300/facility, annually).

**E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):**

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

PST registration annually (\$110/APST annually) required for all APSTs by Section R311-203-4 starting FY2023.  
 Spill Bucket (SB) tests (\$100/SB every 3 years) required for APSTs participating in the EAP by Section R311-203-5 starting FY2023.  
 Line Tightness Testing (LTT)(\$100/line annually) required for APSTs participating in the EAP by Section R311-203-5 starting FY2023.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule will likely have a cost for businesses who choose to use EAP as their form of financial assurance. Meeting certain standards to participate in the EAP prevents releases and minimizes impact on the petroleum storage tank fund.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	0	0	0
Local Governments	\$96,000	\$48,000	\$48,000
Small Businesses	\$96,000	\$48,000	\$48,000
Non-Small Businesses	\$96,000	\$48,000	\$48,000
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$288,000</b>	<b>\$144,000</b>	<b>\$144,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-403	Section 19-6-408

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

<b>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 Office of Administrative Rules; <i>if none, leave blank</i> ):	
	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

<b>9. 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. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until</b> (mm/dd/yyyy):	07/01/2022	
<b>B) A public hearing (optional) will be held:</b>		
<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

<b>10. This rule change MAY become effective on</b> (mm/dd/yyyy):	09/29/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<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 head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy):	05/15/2022

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

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

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

Definitions are found in Rule R311-200.

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

(1) The owner or operator of an UST must notify the director when~~ever~~:

- (a) new USTs are brought into use;
- (b) the owner or operator changes;
- (c) changes are made to the tank or piping system; and
- (d) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed, or upgraded.

(2) ~~At~~ ~~the~~ Notifications must be submitted on the current approved notification form.

(3) Notifications submitted to meet the requirements of Subsection R311-203-2(~~a~~) shall be submitted within 30 days of the completion of the work or the change of ownership.

(4) To satisfy the requirement of ~~Sub~~Section 19-6-407(~~1~~)(~~e~~) the certified installer shall:

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

- (b) provide separate notification to the director within 60 days of the completion of the installation.
- (5) The owner or operator of an APST that is in service on or after May 5, 2021, must notify the director according to the requirements of Subsection 19-6-407(2).
- (6) The owner or operator of an APST that is not in service before May 5, 2021,
  - (a) must notify the director according to the requirements of Subsection 19-6-407(2)(a)(i);
  - (b) is subject to delivery prohibition requirements in Section R311-206-8;
  - (c) is subject to closure requirements under Subsections 19-6-407(2)(a)(iii) and (iv) and Section R311-204-2;
  - (d) must demonstrate the tank has been emptied of any regulated substance to the lowest discharge point on the tank;
  - (e) is subject to release reporting requirements as outlined in Subsection 19-6-407(2)(a)(iv); and
  - (f) must notify local emergency responders of a spill or overflow exceeding 25 gallons within 24 hours.
- (7) The owner or operator of an APST that is not in service before May 5, 2021, is not subject to the requirements of Subsection 19-6-407(2)(c) and Section 19-6-412 unless the owner or operator elects to bring the APST back in service.

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

- (1) Certified UST installers must notify the director at least [40]ten business days, or another time period approved by the director, before commencing any of the following activities:
  - (a) the installation of a full UST system or tank only;
  - (b) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
  - (c) the internal lining of a previously-existing tank;
  - (d) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
  - (e) the installation of a bladder in a tank;
  - (f) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
  - (g) the installation of a spill prevention or overflow prevention device;
  - (h) the installation of a leak detection monitoring system; or
  - (i) the installation of a containment sump or under-dispenser containment.
- (2) The UST installation company must submit to the director an UST installation permit fee of \$200 when any of the activities listed in Subsections R311-203-3(1)(a) through R311-203-3(1)(f) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.
- (3) The fees assessed under Subsection 19-6-411(2)(a)(i) will be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date.
  - (a) installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3(3) is charged shall count toward the total installations for the 12-month period.
- (4) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(4), an installation is considered complete when:
  - (a) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or
  - (b) in the case of installation of the components listed in Subsections R311-203-3(1)(d) through R311-203-3(1)(f), the new installation is functional and the UST holds a regulated substance and is operational.
- (5) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the director of the change.
  - (a) when additions are made, the UST installation permit fee shall be increased based on the additional number of tanks to be installed in accordance with Subsection 19-6-411(2)(a)(i) and the Department of Environmental Quality Fee Schedule, as approved annually by the Legislature.
- (6) The number of UST installation companies performing work on a particular installation will not be a factor in determining the UST installation permit fee for that installation.
  - (a) each installation company must be identified on the UST installation permit.

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

#### **R311-203-4. [~~Underground~~]Petroleum Storage Tank Registration Fee.**

(1) Registration fees will be assessed by the Department against [~~all~~] tanks which are not permanently closed for the entire fiscal year, and will be billed per facility.

(2) Registration fees are due on July 1 of the fiscal year for which the assessment is made, or, for [~~USTs~~]PSTs brought into use after the beginning of the fiscal year, [~~UST~~]registration fees are due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

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

(4) The director shall issue a certificate of registration to owners or operators for individual [~~USTs~~]PSTs at a facility if:

(a) the tanks are in use or are temporarily closed [~~according to~~]as outlined in 40 CFR Part 280 Subpart G; and

(b) the [~~UST~~]PST registration fee has been paid.

(5) Pursuant to Subsection 19-6-408(5)(c), [~~all~~] past due PST registration fees, late payment penalties and interest must be paid before the director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility.

(a) the director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the [~~USTs~~]PSTs within one year of becoming the new owner or operator of the facility.

(6) A UST will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of compliance with the EPA Technical Compliance Rate during an inspection, and remains out of compliance for six months or greater following the initial inspection.

(a) the higher registration fee is due July 1 following the documented six-month period of non-compliance.

(7) When the director is notified of the existence of a previously unregistered regulated [~~UST~~]PST, the director shall assess the applicable notification fee and PST registration fee for the current fiscal year.

(a) if the [~~UST~~]PST is properly permanently closed within 90 days of the notification of the existence of the [~~UST~~]PST, the director may decline active collection of past[-]due registration fees, late payment penalties, and interest for previous fiscal years.

#### **R311-203-5. [~~UST~~]PST Testing Requirements.**

(1) Tank tightness testing. The testing method must be able to test the [~~UST~~]PST system at the maximum level that could contain regulated substances.

(a) tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

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

(a) the form "Utah Spill Prevention Test"; or

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

(c) another form approved by the director.

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

(a) the form "Utah Containment Sump Test"; or

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

(c) another form approved by the director.

(4) When a sump sensor is used as an automatic line leak detector, the secondary containment sump must be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the director.

(a) the sensor shall be located as close as is practicable to the lowest portion of the sump.

(5) Cathodic protection testing. Cathodic protection tests must meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the director. The tester who performs the test must provide the following information:

(a) location of at least three test points per tank;

(b) location of one remote test point for galvanic systems;

(c) test results in volts or millivolts;

(d) pass[~~/~~]or fail determination for each tank, line, flex connector, or other UST system component tested;

(e) the criteria by which the pass[~~/~~]or fail determination is made; [~~and~~]

(f) a site plat showing locations of test points[~~-~~];and

(g) a re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(6) UST testers performing tank and line tightness testing must include the following as part of the test report:

(a) pass[~~/~~]or fail determination for each tank or line tested[~~-~~];

(b) measured leak rate;

(c) test duration;

(d) product level for tank tests;

(e) pressure used for pressure tests;

(f) type of test; and

(g) test equipment used.

(7) overfill prevention equipment inspection. An individual who conducts an inspection of overfill prevention equipment to meet the requirements of 40 CFR 280.35(a)(2) must report the results using:

(a) the form "Appendix C-5 UST Overfill Equipment Inspection Automatic Shutoff Device and Ball Float Valve," found in PEI RP1200, when the overfill prevention is provided by either an automatic shutoff device or a ball float valve;

(b) the form "Appendix C-6 Overfill Alarm Operation Inspection," found in PEI RP1200, when overfill prevention is provided by an overfill alarm; or

(c) another form approved by the director.

(8) Automatic tank gauge inspection. An individual who conducts an inspection of automatic tank gauges to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

(a) the form "Appendix C-7 Automatic Tank Gauge Operation Inspection," found in PEI RP1200, and if the [~~UST~~]PST system or any portion thereof is interstitially monitored, "Appendix C-8: Liquid Sensor Functionality Testing," found in PEI RP1200; or

(b) another form approved by the director.

(9) Automatic line leak detector testing. An individual who conducts a test of automatic line leak detectors to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

(a) the form "Appendix C-9 Mechanical and Electronic Line Leak Detector Performance Tests," found in PEI RP1200; or

(b) another form approved by the director.

(10) Leak Detection and Testing Requirements for APSTs using the EAP for financial responsibility:

(a) line tightness testing or monthly monitoring is required for underground piping associated with APSTs.

(i) an individual who conducts a tightness test of product lines must perform the test as set forth in 40 CFR 280.44(b).

(ii) when pressurized underground product piping is connected to an APST that is not double-walled, sensor equipped, and monitored monthly, the product piping must be tested for tightness annually. The test must meet the requirements of Subsection R311-203-5(6).

(b) spill prevention equipment associated with an APST must meet the standards set forth in International Fire Code (IFC) 2306.6.2.6 referenced in the Utah State Fire Code adopted pursuant to Section 15A-5-103 and be double-walled and monitored monthly; or have an integrity test performed every three years. The test must meet the requirements of Subsection R311-203-5(2).

(c) beginning July 1, 2026, an APST resting on the ground must perform monthly interstitial monitoring, a monthly 0.2 gallon per hour release detection test, or a tank tightness test every 5 years. The test must meet the requirements of Subsection R311-203-5(2).

(d) beginning July 1, 2026, if applicable, APSTs and associated piping are required to have cathodic protection that meets the standards set forth in IFC 5704.2.7.9 and National Fire Protection Agency (NFPA) 30.23.3.5 and must have a passing cathodic protection test every 3 years. The test must meet the requirements of Subsection R311-203-5(5).

(e) beginning July 1, 2026, an APST shall have an overflow prevention device that meets the standards set forth in IFC 2306.6.2.3, 5704.2.7.5.8 and 5704.2.927.5 and must have an overflow prevention equipment inspection performed every three years. The overflow prevention equipment inspection must meet the requirements of Subsection R311-203-5(7).

(f) beginning July 1, 2026, an APST with pressurized underground product piping shall have an automatic line leak detector that meets the standards set forth in IFC 2306.7.7.1 and must have an automatic line leak detector test performed annually. The test must meet the requirements of Subsection R311-203-5(9).

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

(1) Secondary containment for tanks and piping.

(a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, [aH] tanks and product piping that are installed as part of an UST system after October 1, 2008 and before January 1, 2017 must have secondary containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) the secondary containment installed under Subsection R311-203-6(1) must meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping.

(i) monthly monitoring must meet the requirements of 40 CFR 280.43(g).

(c) containment sumps for piping installed under Subsection R311-203-6(1) are required:

(i) at the submersible pump or other location where the piping connects to the tank;

(ii) where the piping connects to a dispenser, or otherwise goes aboveground; and

(iii) where double-walled piping that is required under Subsection R311-203-6(1) connects with existing piping.

(d) containment sumps for piping that is installed under Subsection R311-203-6(1) must:

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

(ii) meet the requirements of Subsection[s] R311-203-6(2)(b).

(e) in the case of a replacement of tank or piping, only the portion of the UST system being replaced is subject to the requirements of Subsection R311-203-6(1).

(i) if less than 100% of the piping from a tank to a dispenser is replaced, the requirements of Subsection R311-203-6(1) applies to [aH] new product piping that is installed.

(ii) the closure requirements of Rule R311-205 apply to [aH] product piping that is taken out of service.

(iii) when new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping must be secondarily contained, and monitored for releases according to 40 CFR 280.43(g).

(f) the requirements of Subsection R311-203-6(1) do not apply to:

(i) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2); or

(ii) piping that connects two or more tanks to create a siphon system.

(g) the requirements of Subsection R311-203-6(1) apply to emergency generator USTs installed after October 1, 2008.

(2) Under-dispenser containment.

(a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, [aH] new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an UST, must have under-dispenser containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) the under-dispenser containment must:

(i) be liquid-tight on its sides, bottom, and at [aH] penetrations;

(ii) be compatible with the substance conveyed by the piping; and

(iii) allow for visual inspection and access to the components in the containment system, or be continuously monitored for the presence of liquids.

(c) if an existing dispenser is replaced, the requirements of Subsection R311-203-6(2) apply to the new dispenser if any equipment used to connect the dispenser to the [UST]PST system is replaced.

(i) this equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(3) The requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply if the installation is located more than 1,000 feet from an existing community water system or an existing potable drinking water well.

(a) the [UST]PST owner or operator must provide to the director documentation to show that the requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply to the installation.

(b) the documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(i) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1,000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility; and

(ii) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections R311-203-6(1) and R311-203-6(2).

(4) To determine whether the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new UST, piping, or motor fuel dispenser system to:

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

(i) the location of the wellheads for groundwater and[~~and~~] the location of the intake points for surface water;

(ii) water lines, processing tanks, and water storage tanks; and

(iii) water distribution[/and] service lines under the control of the community water system operator, or

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

(5) If a new UST facility is installed, and is not within 1,000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply if the owner or operator installs a potable drinking water well at the facility that is within 1,000 feet of the UST, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(6) To meet the requirements of 40 CFR 280.20, [aH] tanks and product piping that are installed or replaced as part of an UST system on or after January 1, 2017 must be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

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

(1) Owners and operators must perform periodic inspections in accordance with 40 CFR 280.36.

(a) inspections must be conducted by or under the direction of the designated Class B operator.

(b) the Class B operator must ensure that documentation of each inspection is kept and made available for review by the director.

(2) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or 208.36(a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the director.

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

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

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

(1) An UST facility that:

(a) normally has no employee on site or is open to dispense fuel at times when no employee or trained operator is on site must have:

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

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

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

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-408**

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-204</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-204. Underground Storage Tanks: Closure and Remediation.
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs).
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Added requirements for closure notification and release reporting for APSTs referenced in Subsection 19-6-407(2).

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Rule R311-204. There is a direct fiscal cost to state owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (R311-205). The total fiscal cost is inestimable because the number of APSTs that the state will choose to close is unknown.
<b>B) Local governments:</b>
Rule R311-204. There is a direct fiscal cost to local governments owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (R311-205). The total fiscal cost is inestimable because the number of APSTs that local government will choose to close is unknown.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
Rule R311-204. There is a direct fiscal cost to small business owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (R311-205). The total fiscal cost is inestimable because the number of APSTs small businesses will choose to close is unknown.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

Rule R311-204. There is a direct fiscal cost to non-small business owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (R311-205). The total fiscal cost is inestimable because the number of APSTs non-small businesses will choose to close is unknown.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Beginning May 5, 2021 APST owner are required to notify when they close an APST (Subsection 19-6-407(2)(iii)). The approximate cost, using certified contractors, is \$20,000/tank which includes the site assessment.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

These changes will only have a fiscal cost to businesses who chooses to permanently close an APST.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-402	Section 19-6-402

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until (mm/dd/yyyy):</b>	07/01/2022	
<b>B) A public hearing (optional) will be held:</b>		
<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

<b>10. This rule change MAY become effective on (mm/dd/yyyy):</b>	09/20/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

**To the agency:** 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 *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Brent Everett, Director	<b>Date (mm/dd/yyyy):</b>	05/15/2022
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-204. [~~Underground~~]Petroleum Storage Tanks: Closure and Remediation.**

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

Definitions are found in [~~Section~~]Rule R311-200.

**R311-204-2. [~~Underground~~]Petroleum Storage Tank Closure Plan.**

(1) Owners or operators of [~~all~~] [~~USTs~~]PSTs or any portion thereof which are to be permanently closed or undergo change-in-service must submit a permanent closure plan to the director.

(a) the permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with [~~40 CFR 280 Subpart G.~~]Subsection 19-6-407(2)(a)(iii) for APSTs and 40 CFR 280 Subpart G for USTs.

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

(3) The closure plan shall address applicable issues involved with permanent closure, ~~or~~ change-in-service, or reuse of APSTs, including:

- (a) product removal;
- (b) sludge disposal;
- (c) vapor purging or inerting;
- (d) removing or securing and capping product piping;
- (e) removing vent lines or securing vent lines open;
- (f) tank cleaning;
- (g) environmental sampling;
- (h) contaminated soil and water management;
- (i) in-place tank disposal or tank removal;
- (j) transportation of tank;
- (k) permanent disposal; and
- (l) other disposal activities which may affect human health, human safety, or the environment.

(4) No ~~UST~~ PST shall be permanently closed or undergo change-in-service ~~prior to~~ before the owner or operator receiving final approval of the submitted permanent tank closure plan by the director, except as outlined in Subsection R311-204-2(~~b~~2).

(a) closure plan approval is effective for a period of one year.

(b) if the ~~UST~~ PST has not been permanently closed or undergone change-in-service as proposed within one year following approval from the director, the plan must be re-submitted for approval, unless otherwise approved by the director.

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

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

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

(8) The director must be notified at least three business days ~~prior to~~ before the start of closure activities.

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

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

- (a) the facility identification number;
- (b) the substance contained; and
- (c) the date removed: "month/day/year."

(2) Removed tanks shall be expeditiously disposed of as regulated ~~USTs~~ PSTs by the following methods:

- (a) the tank may be cut up after the interior atmosphere is first purged or inerted.
- (b) the tank may be crushed after the interior atmosphere is first purged or inerted.
- (c) the tank may not be used to store food or liquid intended for human or animal consumption.
- (d) the tank may be disposed of in a manner approved by the director.

(3) Any removed APST that is to be reused as an APST must be recertified by the manufacturer of the tank or undergo a tank inspection, conducted by a qualified contractor, using a nationally recognized standard such as API 653.

~~(3)~~ (4) Tank transportation. Used tanks which are transported on roads of the ~~S~~ state ~~of Utah~~ must be cleaned inside the tank ~~prior to~~ before transportation, and be free of ~~all~~ product, free of ~~all~~ vapors, or ~~rendered~~ made inert during transport.

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

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

(2) Owners or operators of USTs which are permanently closed [~~or have a change in service~~]after December 22, 1988, and APSTs closed or having a change-in-service as defined in 40 CFR 280 Subpart G after May 5, 2021 must submit a completed closure notice form and the following information within 90 days after tank closure:

(a) [~~all~~] results from the closure site assessment conducted in accordance with Rule R311-205, including analytical laboratory results and chain of custody forms; and

(b) [~~effective January 1, 1993,~~]a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include:

- (i) scale;
- (ii) north arrow;
- (iii) streets;
- (iv) property boundaries;
- (v) building structures;
- (vi) utilities;
- (vii) [~~UST~~]PST system location;
- (viii) location of any contamination observed or suspected during sampling;
- (ix) location and volume of any stockpiled soil;
- (x) the extent of the excavation zone; and
- (xi) any other relevant features.

(c) [~~all~~]sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(3) Owners and operators of [~~USTs~~]PSTs that are temporarily closed for a period greater than three months must submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(4) [~~all~~][e]Closure notices for permanent and temporary closure shall be submitted on the current approved forms.

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

(1) Any [~~UST~~]PST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a certified [~~UST~~]PST consultant, except as outlined in Subsections 19-6-402(6)(b), R[-]311-201-2([~~a~~]1), and R311-204-5(2).

(2) At the time of [~~UST~~]PST closure, a certified UST remover may over-excavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the director, in addition to the minimum amount required for closure of the [~~UST~~]PST.

(a) this over-excavation may be performed without the supervision of a certified [~~UST~~]PST consultant.

(b) appropriate confirmation samples must be taken by a certified [~~groundwater and soil~~]sampler in accordance with Rule R311-201 [~~for the purpose of~~]to determin[ing]e the extent and degree of contamination.

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

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-205</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-205. Underground Storage Tanks: Site Assessment Protocol
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs).
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Added requirements for notification for APSTs to comply with Subsection 19-6-407(2) requirements for site assessment and release reporting. Made changes to sampling protocol for product dispensers and added sampling requirements remote fills.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
<p>Rule R311-205. There is a direct fiscal cost to state owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in Notice of Proposed Rule R311-204 includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that the state will choose to perform a site assessment or site check on is unknown.</p> <p>Subsection R311-205-2(3)(d). This rule change is not expected to have a fiscal impact on the state government owned facilities with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.</p> <p>Subsection R311-205-2(3)(e). There is a direct fiscal cost to state owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that the state will choose to perform a site assessment or site check on is unknown.</p>

**B) Local governments:**

Rule R311-205. There is a direct fiscal cost to local government owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in Notice of Proposed Rule R311-204 includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that a local government will choose to perform a site assessment or site check on is unknown.

Subsection R311-205-2(3)(d). This rule change is not expected to have a fiscal impact on a local government owned facility with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

Subsection R311-205-2(3)(e). There is a direct fiscal cost to local government owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that a local government will choose to perform a site assessment or site check on is unknown.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

Rule R311-205. There is a direct fiscal cost to small business owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in Notice of Proposed Rule R311-204 includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that a small business will choose to perform a site assessment or site check on is unknown.

Subsection R311-205-2(3)(d). This rule change is not expected to have a fiscal impact on a small business owned facility with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

Subsection R311-205-2(3)(e). There is a direct fiscal cost to small business owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that the small business will choose to perform a site assessment or site check on is unknown..

**D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**

Rule R311-205. There is a direct fiscal cost to non-small business owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in Notice of Proposed Rule R311-204 includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that a non-small business will choose to perform a site assessment or site check on is unknown.

Subsection R311-205-2(3)(d). This rule change is not expected to have a fiscal impact on a non-small business owned facility with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

Subsection R311-205-2(3)(e). There is a direct fiscal cost to non-small business owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that the non-small business will choose to perform a site assessment or site check on is unknown

**E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):**

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

**F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

Beginning May 5, 2021 APST owner may be required to do a site assessment or site check (Subsection 19-6-428(3)(b)). The approximate cost, using certified contractors, is \$300 per sample.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

These changes will only have a fiscal cost to businesses who chooses to permanently close an APST, perform a site assessment or site check.

Kim Shelley, Executive Director of the Department of Environmental Quality

**6. A) Regulatory Impact Summary Table (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 will be included in narratives above.)**

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025

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

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-403	Section 19-6-413

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until</b> (mm/dd/yyyy):	07/01/2022	
<b>B) A public hearing (optional) will be held:</b>		
<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building

		195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

<b>10. This rule change MAY become effective on</b> (mm/dd/yyyy):	09/29/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<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 head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy):	05/15/2022

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

**R311-205. ~~[Underground]~~Petroleum Storage Tanks: Site Assessment Protocol and Release Reporting.**

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

Definitions are found in Rule R311-200.

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

(1) General Requirements.

(a) a site assessment or site check is required:

(i) for USTs, pursuant to 40 CFR 280.72 or Subsection 19-6-428(3).

(ii) for APSTs, when the tank or connected piping are permanently closed or as pursuant to Subsections 19-6-420(2)(a) and 19-6-428(3).

~~[(a)b]~~ when a site assessment or site check is required, ~~[pursuant to 40 CFR 280 or Subsection 19-6-428(3),]~~ owners or operators shall perform the work or commission the work to be performed according to Rule R311-205 or equivalent, as approved by the director.

~~[(b)c]~~ additional environmental media samples must be collected when contamination is found, suspected, or as requested by the director.

~~[(e)d]~~ ~~[aH]~~ environmental media samples are to be collected according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, dated June 1, 2021, which is ~~[hereby]~~ incorporated by reference, or as determined by the director.

~~[(e)e]~~ ~~[O]~~ owners and operators must document and report to the director the following:

(i) sample types;

(ii) sample locations and depths;

(iii) field and sampling measurement methods;

(iv) the nature of the stored substance;

(v) the type of backfill and native soil;

(vi) the depth to groundwater; and

(vii) other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.

~~[(e)f]~~ the owner or operator must report the discovery of any reportable release or suspected release to the director within 24 hours.

(i) owners or operators must begin release investigation and confirmation steps ~~[in accordance with]~~ as outlined in 40 CFR 280, Subpart E and Section 19-6-420 upon suspecting a release.

(ii) owners or operators must begin release response and corrective action ~~[in accordance with]~~ as outlined in 40 CFR 280, Subpart F and Section 19-6-420 upon confirming a release.

([f]g) [aH] environmental media samples must be collected by a certified sampler who meets the requirements of Rule R311-201.

(i) the certified sampler shall record the depth below grade and location of each sample collected to within one foot.

([g]h) [aH] environmental media samples must be analyzed within the time frame allowed, in accordance with the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, by a certified environmental laboratory.

(i) soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

([h]i) environmental media samples for [UST]PST permanent closure or change in service must be collected according to the protocol outlined in Subsection R311-205-2(2), after the [UST]PST system is emptied and cleaned and after the closure plan has been approved.

([i]j) environmental media confirmation samples are required following over-excavation of soils.

(i) confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent, and degree of a release from any portion of the [UST]PST ~~[in accordance with]~~ as outlined in 40 CFR 280, Subparts E, F, and G.

(ii) additional confirmation samples may be required as determined by the director.

([j]k) upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and [aH] other applicable documentation ~~[required by]~~ referenced in 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the director within the specified time frames.

([k]l) when conducting environmental media sampling ~~[to satisfy the requirements of]~~ as referenced in 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as requested by the director.

(i) techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the director, may be used to satisfy requirements of determining native soil type.

([l]m) other types of environmental media or quality assurance samples may be required as determined by the director.

(2) Site assessment protocol for [UST]PST closure.

(a) the appropriate number of environmental media samples, as described in Subsections R311-205-2(2) and R311-205-2(3) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping, or dispenser island.

(i) any other samples required by Subsection R311-205-2(1) must also be collected.

(ii) soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface.

(A) if groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsections R311-205-2(2) and R311-205-2(3) shall be collected from the unsaturated zone immediately above the capillary fringe.

(iii) groundwater samples collected from an excavation shall be collected using proper surface water collection techniques according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, or as determined by the director.

(b) [aH] environmental media samples must be analyzed using the appropriate analytical methods outlined in Subsections R311-205-2(2) and R311-205-2(5).

(c) one soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental media samples, at each tank and product piping area.

(i) for [aH] dispenser islands, only one representative sample to determine native soil type is required.

(ii) techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for [UST]PST closure.

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

(3) Environmental sampling protocol for [UST]PST closures:

(a) for a tank area containing one [UST]PST, one soil sample shall be collected at each end of the tank.

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(b) for a tank area containing more than one [UST]PST, one soil sample shall be collected from each corner of the tank area.

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(c) product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections, and fittings.

(i) these samples must be collected at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled.

(ii) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(d) for ~~[dispenser islands]~~product dispensers, environmental media samples shall be collected from ~~[the middle of]~~beneath each ~~[dispenser island]~~product dispenser.

~~[(i) additional environmental media samples must be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled.]~~

~~[(i)]~~ if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each product dispenser ~~[island]~~where groundwater was encountered.

(e) for PSTs with remote fill, environmental media samples shall be collected from beneath each remote fill location and in intervals which do not allow more than 25 linear feet of the piping associated with the remote fill to go unsampled.

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each sample location where groundwater was encountered.

(4) Site check requirements for re-applying to participate in the [Environmental Assurance Program]EAP.

(a) owners or operators wishing to re-apply for participation in the [Environmental Assurance Program]EAP following a period of lapse or non-participation ~~[must]~~may perform a ~~[tank tightness test and]~~site check pursuant to Subsection 19-6-428(3)~~[(a)]~~.

~~[(i) the tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.]~~

(b) the owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program.

(i) the director shall review and approve the site check plan ~~[prior to]~~before its implementation.

(c) the site check must meet the sampling requirements for [USTs]PSTs, dispensers, and piping as defined in Subsection R311-205-2(2), or as determined by the director on a site-specific basis.

(d) additional sampling may be required by the director based on review of the proposed site check plan and site-specific conditions.

(5) Laboratory analyses of environmental media samples.

(a) environmental media samples which have been collected to determine levels of contamination from [USTs]PSTs must be analyzed by a certified environmental laboratory.

(b) unless otherwise approved by the director, the required analytes and corresponding analytical methods shall be:

(i) for gasoline contamination:

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

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

(ii) for diesel fuel contamination:

- (A) total petroleum hydrocarbons, [~~extractable~~ TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>], by EPA 8015;  
and
- (B) benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) by either EPA 8021 or EPA 8260.
- (iii) for used oil contamination:
- (A) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and
- (B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by EPA 8021 or EPA 8260.
- (iv) for new oil contamination:
- (A) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664.
- (v) contamination from [~~USTs~~]PSTs which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the director.
- (vi) for contamination of an unknown petroleum product type:
- (A) total petroleum hydrocarbons, [~~purgeable~~ TPH as gasoline range organics C<sub>6</sub> - C<sub>10</sub>], by either EPA 8015 or EPA 8260;
- (B) total petroleum hydrocarbons, [~~extractable~~ TPH as diesel range organics C<sub>10</sub> - C<sub>28</sub>], by EPA 8015;
- (C) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and
- (D) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.
- (vii) potential vapor intrusion from petroleum product types shall be analyzed for appropriate constituents as determined by the director.
- (c) [~~ah~~] original laboratory sample results must be returned to the certified [~~groundwater and soil~~] sampler or certified [~~UST~~]PST consultant to verify [~~ah~~] chain of custody protocols, including holding times and analytical procedures, were properly followed.
- (d) environmental media samples must be collected and transported under chain of custody according to EPA methods as approved by the director.
- (e) reporting limits used by laboratories analyzing environmental media samples taken under this rule shall be below Initial Screening Levels for the contaminated media under study.
- (i) environmental media samples shall be analyzed with the least possible dilution to ensure reporting limits are below Initial Screening Levels to the extent possible.
- (ii) if more than one determinative analysis is performed on any given environmental media sample, the final dilution factor used and the reporting limit must be reported by the laboratory.
- (A) as an alternative to diluting environmental media samples, the laboratory shall use appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference.
- (iii) any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

**KEY: petroleum, underground storage tanks**

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-206</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs). Requirements were added to the Underground Storage Tank Act for APSTs to have a certificate of compliance and financial assurance (FA) mechanism per Subsection 19-6-407(2).
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule change adds the requirement for owners or operators of APSTs to declare a form of FA to obtain a Certificate of Compliance. Added further requirements to rule for APSTs that choose to participate in the Environmental Assurance Program (EAP) which includes a phase-in for certain requirements by July 1, 2026. Defined eligible exempt aboveground storage tanks (ASTs) participation in the EAP. Added requirements for delivery prohibition for APSTs. Simplified language in the rule by deleting Subsection R311-206-10(2) due to changes in Subsection 19-6-428(3) which no longer required facilities to do a site check to participate in the EAP after a period of non-participation.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Subsection R311-206-2(1) Any fiscal cost to state government was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.
Subsection R311-206-3(1)(g). This rule change is not expected to have a fiscal impact on the state government owned APST sites because there is no requirement to hire a third party to create a site plat or as-built drawing.
Subsection R311-206-4(6). This rule change is not expected to have a fiscal impact on the state government owned APST sites because these sites already meet the requirements set forth in the rule.
Subsection R311-206-5(1). This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all proposed changes are just clarifications and this rule.

Subsection R311-206-6(2). This rule change is not expected to have a fiscal impact on state government's owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will wish to voluntarily participate in the EAP.

Subsection R311-206-8(3). There is a direct fiscal cost to state owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by the state which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

Section R311-206-10. There may be a direct fiscal benefit to state owned facilities with PSTs. PSTs owned by the state are required by statute to participate in the EAP, so any facility that loses coverage under the EAP due to lapse or revoking of their Certificate of Compliance may not be required complete a site check to reapply. Historically, very few of state owned facilities have had their Certificate of Compliance lapsed or revoked so the benefit will be very little.

Subsection R311-206-11(8). According to statute (19-6-10.5(5)(e)(iv)) this rule change will not have an immediate fiscal impact on the state government owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026.

**B) Local governments:**

Subsection R311-206-2(1) Any fiscal cost to local governments was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.

Subsection R311-206-4(6). This rule change is expected to have a fiscal cost on the approximately 160 local government owned facilities with APSTs that choose to participate in the EAP. The fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

Subsection R311-206-5(1). This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all proposed changes are just clarifications and this rule.

Subsection R311-206-6(2). This rule change is not expected to have a fiscal impact on local government owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will choose to voluntarily participate in the environmental assurance program.

Subsection R311-206-8(3). There is a direct fiscal cost to local government owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by local government which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

Section R311-206-10. There may be a direct fiscal benefit to local government owned facilities with PSTs but the number of facilities that choose to participate in the EAP after a period of non-participation, due to a change from an alternate form of financial assurance, or due to lapsing or revoking of their Certificate of Compliance, is inestimable.

Subsection R311-206-11(8). According to statute (19-6-10.5(5)(e)(iv)) this rule change will not have an immediate fiscal impact on the local government's government owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

Subsection R311-206-2(1) Any fiscal cost to small businesses was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.

Subsection R311-206-4(6). This rule change is expected to have a fiscal cost on the approximately 160 small business owned facilities with APSTs that choose to participate in the EAP. The fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

Subsection R311-206-5(1). This rule change is not expected to have any fiscal impacts on small business revenues or expenditures because all proposed changes are just clarifications and this rule.

Subsection R311-206-6(2). This rule change is not expected to have a fiscal impact on small business owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will choose to voluntarily participate in the environmental assurance program.

Subsection R311-206-8(3). There is a direct fiscal cost to small business owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by small businesses which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

Section R311-206-10. There may be a direct fiscal benefit to small business owned facilities with PSTs but the number of facilities that choose to participate in the EAP after a period of non-participation, due to a change from an alternate form of financial assurance, or due to lapsing or revoking of their Certificate of Compliance, is inestimable.

Subsection R311-206-11(8). According to statute (19-6-10.5(5)(e)(iv)) this rule change will not have an immediate fiscal impact on small business owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

Subsection R311-206-2(1) Any fiscal cost to non-small businesses was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.

Subsection R311-206-4(6). This rule change is expected to have a fiscal cost on the approximately 160 non-small business owned facilities with APSTs that choose to participate in the EAP. The fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

Subsection R311-206-5(1). This rule change is not expected to have any fiscal impacts on non-small business revenues or expenditures because all proposed changes are just clarifications and this rule.

Subsection R311-206-6(2). This rule change is not expected to have a fiscal impact on non-small business owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will choose to voluntarily participate in the environmental assurance program.

Subsection R311-206-8(3). There is a direct fiscal cost to non-small business owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by non-small businesses which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

Section R311-206-10. There may be a direct fiscal benefit to non-small business owned facilities with PSTs but the number of facilities that choose to participate in the EAP after a period of non-participation, due to a change from an alternate form of financial assurance, or due to lapsing or revoking of their Certificate of Compliance, is inestimable.

Subsection R311-206-11(8). According to statute (19-6-10.5(5)(e)(iv)) this rule change will not have an immediate fiscal impact on the non-small business owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

New for APSTs:

- APSTs using alternate form of FA R311-206-3(1)(f): \$420 initial \$240 annual policy review for all facilities of a single owner.
- APSTs using EAP as form of FA: \$150/tank throughput >70,000gals \$450/tank no throughput reported or <70,000 gals.
- APSTs using EAP as form of FA: Add Spill Bucket (if required) \$5 to \$5000/PST.
- APSTs using EAP as form of FA: Add Overfill (if required) \$1500/PST.
- APSTs using EAP as form of FA: Add Automatic Line Leak Detector (if required) \$1500/PST.
- APSTs using EAP as form of FA: Add Cathodic Protection (if required) \$15,000/PST.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule will likely have a cost for businesses who choose to use EAP as their form of financial assurance. Meeting certain standards to participate in the EAP prevents releases and minimizes impact on the petroleum storage tank fund.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**  
The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-402	Section 19-6-428
Section 19-6-410.5		

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 07/01/2022

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

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<b>10. This rule change MAY become effective on</b> (mm/dd/yyyy):	09/29/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<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 head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy): 05/15/2022

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

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

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

Definitions are found in Rule R311-200.

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

(1) To demonstrate financial assurance, as required by ~~[40 CFR 280, subpart H]~~Section 19-6-412 and Subsection 19-6-407(2)(c), owners or operators of petroleum storage tanks must:

(a) declare they will participate in the EAP and meet ~~[aH]~~the requirements for participation in the ~~[Environmental Assurance Program]~~EAP under Sections 19-6-410.5, 19-6-428 and R311-206-4; or

(b) demonstrate financial assurance by an allowable method specified in ~~[40 CFR 280, subpart H]~~Section R311-206-5.

~~[(2) Owners or operators must declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.]~~

~~[(3)2] For the purposes of Subsection 19-6-412(6), ~~[aH]~~ tanks at a facility must be covered by the same financial assurance mechanism, and must be considered to be in one area, unless the director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.~~

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

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

(a) the owner or operator has a certificate of registration;

(b) ~~[the tank is substantially in compliance with all state and federal statutes, rules and regulations]~~the owner or operator must certify that the PST is in substantial compliance with state and federal statutes, rules, and regulations applicable to PST systems;

(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).

(c) the ~~[UST]~~tank tightness test, as required by Section 19-6-413 conducted within six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual ~~[UST]~~PST is not leaking;

(d) the owner or operator has submitted a letter to the director stating that based on customary business inventory practices standards there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and ~~[has declared]~~demonstrated the financial assurance mechanism that will be used;

(f) the owner or operator has met ~~[aH]~~the requirements for the financial assurance mechanism chosen, including payment of ~~[aH]~~ applicable fees;

(g) the owner or operator has submitted an as-built drawing, for newly-installed systems, that meets the requirements of Subsection R311-200-1(2)(b) or a site plat, for existing systems, that meets the requirements of Subsection R311-200-1(2)(rr); and

(h) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

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

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

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the director, any petroleum storage tank fee for that tank for the current fiscal year is due when the tank is brought into use, as a requirement for receiving a certificate of compliance.

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

(4) Auditing of ~~[UST]~~[PST] facility throughput records.

(a) owners and operators must retain for seven years the monthly tank throughput records of the facility.

(b) tank throughput records shall include ~~[aH]~~ financial and product documentation for receipts, deliveries, transfers, and inventories.

(c) the director may audit or commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) records must be made available at the ~~[D]~~ department for inspection within 30 calendar days after receiving notice from the director.

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

(iii) auditing tank throughput may be accomplished by any method approved by the director.

(iv) ~~[aH]~~ costs of an independent audit shall be paid by the owner or operator.

(5) Owners or operators eligible for participation in the ~~[Environmental Assurance Program]~~EAP must demonstrate financial assurance for the difference between coverage provided by the ~~[Environmental Assurance Program]~~EAP and coverage amounts required by 40 CFR 280 Subpart H.

(a) if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the director.

(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.

(A) the owner or operator will bear the expense for the audit.

(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).

(b) an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

(c) the processing fee requirement referenced in Subsection R311-206-5(2) is not applicable because the administrative cost is covered by the ~~[Environmental Assurance Program]~~EAP fee.

(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:

(a) before July 1, 2026, the owner or operator:

(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and

(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.

(b) on or after July 1, 2026, the owner or operator:

(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;

(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);

(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and

(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.

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

(1) Owners and operators who elect to utilize an alternate form of financial assurance must meet the minimum coverage amounts [use]using one or a combination of mechanisms [specified]as outlined in 40 CFR 280.94.

(a) owners and operators must submit to the director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

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

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

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) processing fees for subsequent reviews of financial assurance documents are due on July 1 of the fiscal year for which the review is required.

(b) pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.

(ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).

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

(3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:

(a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.

(b) owners and [Ø]operators using insurance and risk retention group coverage for financial assurance must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) if the insurance policy or risk retention group coverage is cance[+]led, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 280.97(b)(2)2.d. to the director as well as the insured.

(ii) the insurer must have a rating of A- or greater by A.M. Best Co.

(c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.

(d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.

(e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

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

(h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from the chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.

(4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) information requested must be reported to the director within 30 calendar days after receiving the request.

(b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.

(d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.

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

(ii) auditing of financial assurance methods may be accomplished by any method approved by the director.

(5) Any ~~and all~~ costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the director is the sole responsibility of the owner or operator.

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

**R311-206-6. Voluntary Admission of Eligible ~~[Exempt Underground Storage Tanks and Aboveground]~~ Exempt Underground Petroleum Storage Tanks and Eligible Exempt Aboveground Storage Tanks Containing Petroleum to the Environmental Assurance Program.**

(1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the ~~[Environmental Assurance Program]~~ EAP by:

(a) performing a site check in accordance with Rule R311-205;

(a) meeting the requirements of ~~[Section]~~ Subsections 19-6-428(3)(a), ~~[and Subsections]~~ 19-6-415(1) and R311-206-3(1);

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

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

(2) Owners or operators of eligible exempt aboveground storage tanks containing petroleum may voluntarily participate in the ~~[Environmental Assurance Program]~~ EAP by[=]

(a) performing a site check in accordance with Rule R311-205; and

(a) meeting the requirements of Subsections 19-6-~~[428]~~15(2) and 19-6-428(3)(a), ~~[and Subsections 19-6-415(2) and]~~ and Sections R311-206-3~~[(1)]~~ and R311-206-4.

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

~~[(c) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor equipped double walled underground product piping; and]~~

~~[(d) performing a tightness test of all aboveground tanks every five years, using a tightness test method capable of properly testing the tank.]~~

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

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

(2) A ~~[petroleum storage tank]~~PST owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(1) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.

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

(4) A ~~[petroleum storage tank]~~PST owner or operator who has had eligibility to receive payments for claims against the ~~[F]~~fund lapse under Subsection 19-6-411(3)(c)(ii) must:

- (a) meet the requirements of Subsection 19-6-428(3); and
- (b) pay all fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Petroleum Storage Tank Fund, the eligibility to make a claim against the Petroleum Storage Tank Fund will terminate as specified in Section R311-207-2.

(a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with the following requirements as outlined in 40 CFR 280~~[, which requires]~~:

- (a) release reporting;
- (b) abatement;
- (c) investigation;
- (d) corrective action; or
- (e) other measures to bring the release site under control.

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

(1) In accordance with Subsection 19-6-411(7) and 19-6-407(2)(d)(ii), the director shall authorize the placement of a delivery prohibition tag identifying a tank:

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

(2) For USTs, ~~[F]~~in accordance with Subsection 19-6-403(1)(b)(i), the director shall authorize the placement of a delivery prohibition tag to be placed on the ~~[tank]~~UST as soon as practicable after the determination is made that a tank does not have:

- (a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (b) overfill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or
- (d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) For APSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the APST as soon as practicable after the determination that the APST was not in service after May 5, 2021.

(~~3~~4) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(~~4~~5) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(5).

(~~5~~6) The director may issue written approval for a delivery of petroleum to:

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

(~~6~~7) The delivery prohibition tag must remain in place until the director issues:

(a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):

- (i) a new certificate of compliance for the tank; and
- (ii) written authorization to remove the delivery prohibition tag; or

(b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):

- (i) written authorization to remove the delivery prohibition tag.

(~~7~~8) If a delivery prohibition tag is removed without the authorization specified in Subsection[s] R311-206-8(6)(a)(ii) or R311-206-8(6)(b)(i), the [~~UST~~]PST owner or operator is [~~be~~] subject to:

- (a) a re-inspection and any applicable fees; and
- (b) placement of a new delivery prohibition tag on the tank.

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

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

(a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205;

or

(b) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5; and

(ii) notifying the director in writing at least 30 days before the date of cessation of participation in the [~~Environmental Assurance Program~~]EAP, and specifying the date of cessation.

(A) the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other petroleum storage tanks owned or operated by the owner or operator.

(B) the date of cessation of participation in the [~~Environmental Assurance Program~~]EAP may occur after the date designated in Subsection R311-206-9(1)(b)(ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) pro[-]rata refunds will not be given.

(3) For tanks being removed voluntarily from the [~~Environmental Assurance Program~~]EAP, the date of cessation of participation in the [~~Environmental Assurance Program~~]EAP shall be the date on which coverage under the [~~Environmental Assurance Program~~]EAP ends.

(a) subsequent claims for payments from the Petroleum Storage Tank Fund must be made in accordance with Sections 19-6-424 and R311-207-2.

(4) For any facility that participates in the [~~Environmental Assurance Program~~]EAP and is sold to a company with facilities that do not participate in the [~~Environmental Assurance Program~~]EAP, the date of termination of coverage is the closing date for the real estate transaction.

(a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

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

(1) Owners and operators ~~[who choose not to participate]~~not participating in the ~~[Environmental Assurance Program]~~EAP must, before any subsequent participation in the ~~[Environmental Assurance Program]~~EAP, meet the following requirements:

(a) notify the director of the intent to participate in the ~~[Environmental Assurance Program]~~EAP;

(b) comply with the requirements of Subsection 19-6-428(3); and

(c) meet the requirements of ~~[Subsection]~~Section R311-206-3~~[(4)]~~ to qualify for a new certificate of compliance.

~~[(2) In accordance with Subsection 19-6-428(3)(b), the director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each petroleum storage tank to participate in the Environmental Assurance Program, meets the following requirements at the time the owner or operator applies for participation:]~~

~~[(a) the last two compliance inspections verify compliance with EPA UST Technical Compliance Rate, and verify that no release has occurred.]~~

~~[(b) documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:]~~

~~[(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;]~~

~~[(ii) the most recent simulated leak test for all automatic line leak detectors;]~~

~~[(iii) cathodic protection tests, if applicable; and]~~

~~[(iv) internal lining inspections, if applicable.]~~

~~[(e) the period of non participation in the Environmental Assurance Program is less than six months, or the petroleum storage tank is less than ten years old.]~~

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

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the ~~[Environmental Assurance Program]~~EAP, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation," which is ~~[hereby]~~ incorporated by reference.

(a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the ~~[Environmental Assurance Program]~~EAP shall be:

(a) calculated on a facility basis;

(b) valid for the calendar year;

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

(d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.

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

(a) meet the requirements for secondary containment in 40 CFR 280.20; and

(b) meet one of the following:

(i) use an interstitial sensor and documentation of monthly interstitial monitoring; or

(ii) documentation of monthly visual checks of a brine-filled interstitial space.

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

(a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and

(b) meet one of the following:

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

(ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps, and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls.

(6) Each facility that participates in the ~~[Environmental Assurance Program]~~EAP may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table," dated June 2, 2014, which is ~~[hereby]~~ incorporated by reference.

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

(8) The Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026 as per Subsections 19-6-410.5(5)(d) and 19-6-410.5(5)(e).

**KEY: petroleum, underground storage tanks**

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428**

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-207</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UtT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs). This includes APST participation in the Petroleum Storage Tank Fund per Section 19-6-409.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
In Subsection R311-207-2(5), clarified the reimbursement percentages for new and historic releases for APSTs which join the Environmental Assurance Program (EAP) without performing a site check.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Subsection R311-207-2(5). This rule change is expected to have potential minimal impacts on state government fleet services expenditures due to paying the fuel surcharge for participating in the EAP, however, in the long term, expenditures by fleet services for potential release cleanup costs will be minimized by EAP participation. Because fleet services throughput and number of releases occurring per year varies, these costs are inestimable.
This rule change is expected to have minimal impacts on DERR's expenditures and revenues due to more facilities paying the fuel surcharge for participating in the EAP, however, more facilities will have release cleanup costs covered by the EAP. Because we cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

**B) Local governments:**

Subsection R311-207-2(5). This rule change is expected to have potential minimal impacts on local government expenditures due to paying the fuel surcharge for participating in the EAP, however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because we cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

Subsection R311-207-2(5). This rule change is expected to have potential minimal impacts on small businesses expenditures due to paying the fuel surcharge for participating in the EAP, however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because we cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

Subsection R311-207-2(5). This rule change is expected to have potential minimal impacts on non-small businesses expenditures due to paying the fuel surcharge for participating in the EAP, however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because we cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

Subsection R311-207-2(5). This rule change is expected to have potential minimal impacts on other persons expenditures due to paying the fuel surcharge for participating in the EAP, however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because we cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

Because we cannot know how many facilities will opt to use the EAP for financial responsibility these costs are inestimable as a total, but for facilities using the EAP for financial responsibility:  
\$0.0065 per gallon surcharge  
\$10,000 deductible for eligible releases

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Minimal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-419	Section 19-6-409
Section 19-6-403		

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 07/01/2022

**B) A public hearing (optional) will be held:**

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

**10. This rule change MAY become effective on** (mm/dd/yyyy): 09/29/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

**To the agency:** 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 *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or</b>	Brent Everett, Director	<b>Date</b>	
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**R311. Environmental Quality, Environmental Response and Remediation.****R311-207. Accessing the Petroleum Storage Tank ~~[Trust]~~ Fund for Leaking Petroleum Storage Tanks.****R311-207-1. Definitions.**

Definitions are found in ~~[Section]~~ Rule R311-200.

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

(1) Any responsible party who is making any claim against the Petroleum Storage Tank ~~[Trust]~~ Fund must:

- (a) have previously satisfied the requirements of Subsection R311-206-3(1);
- (b) have a valid certificate of compliance at the time of product release by the covered ~~[UST]~~ PST; and
- (c) meet the requirements of Section 19-6-424.

(2) Except as provided in Subsection R311-207-2(3), a responsible party eligible to receive payments in accordance with Section 19-6-419 must submit to the director a written eligibility application to make a claim against the Fund:

- (a) during a period for which that tank was covered by the Fund;
- (b) within one year after that Fund-covered tank is closed;
- (c) within six months after the end of the period during which the tank was covered by the Fund; or
- (d) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(3) For eligible releases that are discovered and reported to the director after July 1, 1994, the responsible party ~~[is required to]~~ shall ~~[expend]~~ spend the first \$10,000 in eligible costs as determined by the director.

(4) For eligible releases that are discovered ~~[prior to]~~ before July 1, 1994, the responsible party ~~[is required to]~~ shall ~~[expend]~~ spend the first \$25,000 in eligible costs as determined by the director.

(5) Owners and operators of facilities who participate in the EAP after July 1, 2021 without performing a site check:

(a) for new releases, the responsible party shall spend the first \$10,000 in eligible costs as determined by the director and will be covered at 100%.

(b) for historic contamination, the responsible party shall spend the first \$10,000 in eligible costs as determined by the director and will have release coverage percentages as set forth in Subsection 19-6-428(3).

~~[(5)6]~~ A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in Subsection R311-207-2(2), shall constitute a claim against the Fund in accordance with Section 19-6-424.

~~[(6)7]~~ The responsible party's share of eligible costs remains the same, regardless of the number of responsible parties who are associated with a release and covered by the Fund.

(a) only one responsible party can claim against the ~~[f]~~ Fund per release in accordance with Section 19-6-419.

~~[(7)8]~~ When a facility has an open release and a subsequent Fund eligible release occurs at that facility, the Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable under Section 19-6-419.

(a) additional Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release.

(b) the director shall determine the allowable coverage for a subsequent release.

~~[(8)9]~~ The maximum coverage allowed in Section 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

~~[(9)10]~~ When the director has made a determination that the clean up standards established for the site pursuant to Section R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status.

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

(1) Upon making a claim for coverage under the Petroleum Storage Tank ~~[Trust]~~ Fund, and after receiving notice from the director of eligibility to claim against the Fund, the responsible party shall meet compliance time tables issued by the director.

(2) For allowable costs to be covered by the Fund, the director must approve ~~[all]~~ work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6).

(a) work plans must include a budget for the work.

(i) budgets must be in compliance with Subsection~~[s]~~R311-207-4(8).

(ii) budgets must include proposed costs in an itemized format as described in Subsections R311-207-4(1) through R311-207-4(5).

(3) ~~[Prior to]~~Before performing work eligible for reimbursement by the Fund, the consultant must have a Statement of Qualification approved by the director.

(a) the initial Statement of Qualification submittal shall include information about the qualifications of ~~[all]~~ certified ~~[UST]~~PST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans.

(b) the Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:

(i) the consultant and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

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

(iii) the consultant carries the following insurance:

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

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

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

(c) the Statement of Qualification must be updated annually in January, and shall be approved by the director for a period of one year.

(i) the update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(3)(a) and R311-207-3(3)(b).

(4) Work plans must include the ~~[Petroleum Storage Tank Trust]~~ Fund Work Plan Approval Application and Agreement form documenting the claimant's contract with any proposed consultant or other person performing remedial action.

(a) information provided on that form shall demonstrate that the claimant's contract has met the following requirements:

(i) the contract shall be with the consultant and specify the certified ~~[UST]~~PST consultant and other key personnel for which qualifications are submitted under Subsection R311-207-3(3);

(ii) the contract shall require a 100% payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

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

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

(v) the contract shall require, and include documentation that the consultant carries, the insurance specified in Subsection R311-207-3(3)(b)(iii);

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

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

(viii) any other requirements specified by the director.

(5) Work plans shall address any additional requirements outlined in 40 CFR 280, Subparts E and F.

(6) The director may waive specific requirements of Rule R311-207 if ~~he~~the director determines there is good cause for a waiver, and that public health and the environment will be protected.

(a) the director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the Fund will be affected.

(7) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the director shall review and approve or disapprove work plans and the corrective action plan and ~~all~~ associated budgets.

(8) A request for time and material reimbursement from the Fund must be received by the director within one year from the date the included work was performed or reimbursement shall be denied.

(a) if there are any deficiencies in the request, the claimant has 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item~~(s)~~ shall not be reimbursed.

(b) if a release was initially denied eligibility and is subsequently found to be eligible:

(i) work conducted ~~prior to~~before the determination of eligibility is not subject to the one-year requirement; and

(ii) ~~all~~ work conducted after the determination of eligibility is subject to the one-year requirement.

(9) The request for final reimbursement from the Fund must be received by the director within one year from the date of the "No Further Action" letter issued by the director or reimbursement shall be denied.

(a) if a release is re-opened as provided for in the "No Further Action" letter, payments from the Fund may be resumed when approved by the director.

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

(a) the director must approve ~~all~~ work plans and associated budgets before the consultant initiates any work; and

(b) the contract with the consultant shall comply with Subsection~~s~~R311-207-3(4).

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

(1) ~~In order~~ ~~(t)~~To receive payment from the Petroleum Storage Tank ~~Trust~~ Fund, a claimant must submit a request for reimbursement to the director.

(2) The request for reimbursement must be on the form provided by the director.

(a) the form must be properly completed and signed by the claimant and include invoices and other appropriate documentation.

(3) Reimbursement will be on a time and material basis as approved in advance by the director.

(4) ~~all~~~~e~~Costs for time and material reimbursement must be itemized at a minimum to show the following:

(a) amounts allocated to each approved work plan budget;

(b) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;

(c) sampling, reporting, and laboratory analysis costs;

(d) equipment rental and materials;

(e) utilities;

(f) other direct costs; and

(g) other items as determined by the director.

(5) ~~all~~~~i~~Itemized expenses must ~~indicate~~state the full name and address of the company or contractor providing materials or performing services.

(6) ~~all~~~~e~~Expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the director, with a copy of the original bill provided to the director by the claimant.

(a) the claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Section R311-207-5 and Subsection~~s~~ R311-207-4(8).

(7) For time and material reimbursement, before receiving payment under Section 19-6-419, the claimant must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the director, unless the director has agreed to other arrangements.

(a) the responsible party remains primarily liable, however, for [all] costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

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

(a) a minimum of three competitive bids by responsive bidders. For a bid to be competitive:

(i) two of the bids must be from bidders who are not related parties;

(ii) bids must be submitted on the appropriate standardized Bid Summary form in accordance with the "Cost Guidelines for Underground Storage Tank Sites" document dated June 3, 2021, herein which is incorporated by reference;

(iii) the bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition; and

(iv) the bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(b) sole source justification; or

(c) other documentation as required or requested by the director to document expenses are reasonable, customary, and legitimate.

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

(10) Any third party claims brought against the responsible party or any occurrence likely to result in third party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the director.

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

(1) Costs claimed by the claimant in accordance with Subsection 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

(2) The director may determine the amount of Fund monies that will be reimbursed to a claimant for items including, but not limited to, labor, equipment, services, and tasks established according to ~~the provisions of~~ Section R311-207-7, the Cost Guidelines document, or such other methods that are applicable to the item or task.

(3) As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate:

(a) performing abatement;

(b) investigation;

(c) site assessment;

(d) monitoring;

(e) corrective action activities;

(f) providing alternative drinking water supplies; and

(g) settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

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

(5) The Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the director.

(a) the rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates and the materials at cost to the consultant. Material costs shall include:

- (i) adjustments for ~~all~~ available discounts;
- (ii) refunds;
- (iii) rebates;
- (iv) allowances which the consultant reasonably should take under the circumstances; and
- (v) credits for proceeds the consultant received or should have received from salvage and material returned to suppliers.

(b) in no event shall the price paid by the Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source.

(c) the consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices, or other documents acceptable to the director.

(d) no reimbursement will be made for labor hours and costs associated with development, patenting, or marketing.

(6) The director may audit or commission an audit of records supporting request for reimbursement or payment at any time.

(a) audits may be determined by random selection or for specific reasons, including the suspicion or discovery of inaccuracies, or deficiencies in complying with regulations.

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

(1) When the state makes a payment from the Petroleum Storage Tank ~~Trust~~ Fund, the state has the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible.

(a) the claimant who receives payment from the Fund must execute and deliver ~~all~~the necessary documents and cooperate as necessary to preserve the state's rights and do nothing to prejudice them.

**R311-207-7. Consultant Personnel Classifications, Requirements, Rates, Tasks, and Responsibilities.**

(1) Consultants must assign to one of the categories identified in the Cost Guidelines, any service time for an individual that is billed to a claimant or directly to the Fund and for which reimbursement is claimed.

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

(2) Materials, equipment, and services will be reimbursed in accordance with the Cost Guidelines.

(3) Costs not identified in the Cost Guidelines must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

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

(1) To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(7)(a), the director may utilize budget projections to allocate coverage available for the payment of third party claims ~~prior to~~before a determination that corrective action has been properly performed and completed.

(a) the director may amend budget projections as frequently as deemed appropriate.

(2) Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the State Risk Manager has approved the settlement.

(3) Apportionment and priority shall be based on the order in which an approved and agreed upon claim is received by the director.

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

(1) A certified ~~UST~~PST consultant hired by a third party under Subsection 19-6-409(2)(e) must:

(a) have an approved Petroleum Storage Tank ~~Trust~~ Fund Statement of Qualification in accordance with Subsection R311-207-3(3); and

(b) charge labor rates in accordance with Section R311-207-7.

(2) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release.

(a) the designation shall be made in writing to the director.

(3) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):

(a) [aH] work plans and budgets must be pre-approved by the director in accordance with Subsection R311-207-3(10);

(b) the consultant must comply with Sections R311-207-4 and R311-207-5; and

(c) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(8) and R311-207-3(9).

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

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409; 19-6-419**

**State of Utah**  
**Administrative Rule Analysis**  
Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-208</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-208. Underground Storage Tank Penalty Guidance.
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs).
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Changed title of Rule R311-208 to Petroleum Storage Tank Penalty Guidance. Change title of Section R311-208-2 to Petroleum Storage Tank Penalty Criteria.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because it is a clarification that this rule now applies to Petroleum Storage Tanks (PSTs). The definition of a PST was recently added to Section 19-6-402.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because it is a clarification that this rule now applies to Petroleum Storage Tanks (PSTs). The definition of a PST was recently added to Section 19-6-402.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is expected to have minimal fiscal impacts on small business revenues or expenditures because it is a clarification that this rule now applies to Petroleum Storage Tanks (PSTs). The definition of a PST was recently added to Section 19-6-402.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

This rule change is expected to have minimal fiscal impacts on non-small business revenues or expenditures because it is a clarification that this rule now applies to Petroleum Storage Tanks (PSTs). The definition of a PST was recently added to Section 19-6-402.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

No compliance costs are anticipated to affected parties because proposed changes are just clarifications of what is in the recently enacted Underground Storage Tank Act (Section 19-6-401).

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

No fiscal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6	

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	

<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Date Issued</b>	
<b>Issue, or version</b>	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 07/01/2022

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

**10. This rule change MAY become effective on** (mm/dd/yyyy): 09/29/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

**To the agency:** 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 *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy):	5/15/2022
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-208. [Underground]Petroleum Storage Tank Penalty Guidance.**

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

Definitions are found in Rule R311-200.

**R311-208-2. [Underground]Petroleum Storage Tank Penalty Criteria.**

(1) This guidance provides criteria to the director in implementing appropriate penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425, and any other [S]sections authorizing the director to seek penalties.

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

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

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

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

(a) payment of the penalty may be extended based on a person's inability to pay;

(i) this should be distinguished from a person's unwillingness to pay.

(ii) in cases of financial hardship, the director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(b) without regard to financial hardship, the director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the director; or

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

(i) the project must be in addition to ~~[all]~~ regulatory compliance obligations;

(ii) the project preferably should closely address the environmental effects of the violation;

(iii) the actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(iv) the project must primarily benefit the environment rather than benefit the violator;

(v) the project must be judicially enforceable; and

(vi) the project must not generate positive public perception for violations of the law.

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

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

(a) a facility's certificate of compliance recently lapsed and product has been delivered; or

(b) a facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the director.

(2) The director may assess a penalty against each violator involved in an illegal delivery occurrence.

(a) if a violator is operating as a deliverer and an owner or operator, the violator may be assessed a penalty in each capacity.

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

(1) Under Section 19-6-425, the court establishes penalty amounts rather than the director.

(a) nonetheless, the director may enter a stipulated penalty agreement with the violator.

(2) The director shall consider the following factors when negotiating or calculating a penalty to promote a ~~[more swift]~~ swifter resolution of environmental problems and promote compliance:

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

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

(i) degree of cooperation or noncooperation and good faith efforts to comply, ~~[taking into account]~~ considering the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the state;

(ii) willfulness or negligence of the violation;

(iii) history of compliance or noncompliance; and

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

(c) environmental sensitivity. The actual impact of the violation ~~[s]~~ that occurred.

(d) number of days of noncompliance.

(e) response and investigation costs incurred by the State and others.

(f) the possible deterrent effect of a penalty to prevent future violations.

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

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

(a) Major Violations: \$5,000 to \$10,000 per violation.

(i) this category includes major deviations from the requirements of the rules or act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.

(b) Moderate Violations: \$2,000 to \$7,000 per violation.

(i) this category includes moderate deviations from the requirements of the rules or act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.

(c) Minor Violations: Up to \$3,000 per violation.

(i) this category includes slight deviations from the rules or act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health and the environment, or violations that may have a minor adverse effect on the regulatory program.

(5) The director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance to Section [tø] R311-208-5.

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

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-211</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311- 211. Corrective Action Cleanup Standards Policy -- UST and CERCLA Sites.
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs).
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Change title Rule R311-211 to Corrective Action Cleanup Standards Policy- PST and CERCLA Sites. Changed underground storage tanks (USTs) to petroleum storage tanks (PSTs) where necessary to reflect enacted changes to the Underground Storage Tank Act (Section 19-6-401). Update punctuation, capitalization, structure, and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is expected to have minimal fiscal impacts on state government revenues or expenditures because departments which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.
<b>B) Local governments:</b>
This rule change is expected to have minimal fiscal impacts on local government revenues or expenditures because those which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>

This rule change is expected to have minimal fiscal impacts on small business revenues or expenditures because those which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule change is expected to have minimal fiscal impacts on non-small business revenues or expenditures because those which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is expected to have minimal fiscal impacts on other persons because those who own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

These costs are site specific, and due to the diverse nature of PST release sites, are inestimable.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Minimal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-106	Section 19-6-403

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of

materials incorporated by reference must be submitted to the Office of Administrative Rules; <i>if none, leave blank</i> ):	
	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
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<b>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 Office of Administrative Rules; <i>if none, leave blank</i> ):	
	<b>Second Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
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**Public Notice Information**

<b>9. 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. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until</b> (mm/dd/yyyy):	07/01/2022	
<b>B) A public hearing (optional) will be held:</b>		
<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

<b>10. This rule change MAY become effective on</b> (mm/dd/yyyy):	09/29/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<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 head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy): 05/15/2022

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

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

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

Definitions are found in [~~Section~~]Rule R311-200.

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

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

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

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

- (1) The impact or potential impact of the contamination on the public health;
- (2) The impact or potential impact of the contamination on the environment;
- (3) Economic considerations and cost effectiveness of cleanup options; and
- (4) The technology available for use in cleanup.

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

In determining background concentrations, cleanup standards, and significance levels, levels of contamination in groundwater, surface water, soils or air will not be allowed to degrade beyond the existing contamination levels determined through appropriate monitoring or the use of other data accepted by the [B]board or the [D]director as representative.

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

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

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

(b) for air-related corrective action, the appropriate air quality standards established under the Federal Clean Air Act[-]; and

(c) [O]ther standards as determined applicable by the [B]board may be utilized.

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

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

(a) quantity of materials released;

(b) mobility, persistence, and toxicity of materials released;

(c) exposure pathways;

(d) extent of contamination and its relationship to present and potential surface and groundwater locations and uses;

(e) type and levels of background contamination; and

(f) other relevant standards and factors as determined appropriate by the [B]board.

#### **R311-211-6. [UST]PST Facility Cleanup Standards.**

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

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

(3) If all contaminants are below initial screening levels, the [D]director shall evaluate the site for No Further Action determination.

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

(a) No buildings, property boundaries or utility lines are located within 30 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal

to the Tier 1 screening levels in the tables referred to in [subparagraphs] Subsections (1) and (4) above, respectively, and;

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

(5) If any contaminants from a release are above the Initial Screening Levels, the [D]director shall require owners and operators to submit [aH] relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(a) If [aH] Tier 1 Screening Criteria have been met, the [D]director shall evaluate the site for No Further Action determination.

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

(i) Owners and operators shall conduct a site investigation to provide complete information to the [D]director regarding the factors outlined in Subsection R311-211-5([e]3) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the [D]director site-specific cleanup standards based upon an analysis of the factors outlined in Subsection R311-211-5([e]3). Alternatively, the owners and operators may propose for the approval of the [D]director the Initial Screening Levels established in Subsection R311-211-6([a]1) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the [D]director [~~prior to~~]before completing the site investigation. However, if corrective action is implemented in separate phases, the [D]director will not make a No Further Action determination until all factors outlined in Subsection R311-211-5([e]3) are evaluated.

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

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the [D]director may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in Subsection R311-211-5([e]3) for the [D]director's approval. The [D]director may also require further investigation to fully define the extent and degree of the contamination if the passage of time or other factors creates the possibility that existing data may no longer be reliable.

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

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

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

**KEY: petroleum, underground storage tanks**

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

**Notice of Continuation: March 8, 2022**

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised November 2021

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R311-212</b>	<b>Filing ID (Office Use Only)</b>
<b>Changed to Admin. Code Ref. (R no.):</b>	<b>R</b>	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room no.:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-212. Administration of the Petroleum Storage Tank Loan Program
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
S.B 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the DERR to begin regulation of aboveground petroleum storage tanks (APSTs).
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
This rule changed underground storage tank (UST) registration fees to petroleum storage tank (PST) registration fees to reflect enacted changes to the Underground Storage Tank Act Section 19-6-401. Subsection R311-212(3)(4)(c) was changed to clarify that USTs mean petroleum USTs.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impacts on small business revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

This rule change is not expected to have any fiscal impacts on non-small business revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because proposed changes are just clarifications.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

No compliance costs are anticipated to affected parties because proposed changes are just clarifications.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

No fiscal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality.

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-105	Section 19-6-403	Section 19-6-409

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

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**A) Comments will be accepted until** (mm/dd/yyyy): 07/01/2022

**B) A public hearing (optional) will be held:**

<b>On</b> (mm/dd/yyyy):	<b>At</b> (hh:mm AM/PM):	<b>At</b> (place):
06/15/2022	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

**10. This rule change MAY become effective on** (mm/dd/yyyy): 09/29/2022

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<b>Agency head or designee, and title:</b>	Brent Everett, Director	<b>Date</b> (mm/dd/yyyy):	05/15/2022
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**R311. Environmental Quality, Environmental Response and Remediation.**

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

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

Definitions are found in Rule R311-200.

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

(1) Application for a loan must be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9).

(a) loan applications will be accepted during application periods designated by the director.

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

(a) the current balance due for ~~all~~ outstanding loans is less than 25% of the cash balance of the Petroleum Storage Tank ~~Trust~~ Fund; and

(b) the cash balance of the Fund exceeds \$10,000,000.

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

(4) An open application period will close if:

(a) the current balance due for [aH] outstanding loans exceeds 25% of the cash balance of the Fund; or

(b) the cash balance of the Fund is less than \$10,000,000.

(5) If an open application period closes as required by Subsection R311-212-2(4), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(1).

(6) Applications must be received by the director by 5[:00] p.m. on the last day of the application period.

(7) Loan applications received outside the application period will be invalid.

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

(1) The director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5) through 19-6-409(8).

(2) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must, for [aH] facilities for which the applicant requests a loan:

(a) demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with [aH] requirements for remediation of facilities with leaking USTs; or

(b) must be able to achieve compliance with the loan proceeds.

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

(a) the applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with [aH] requirements for remediation of facilities with leaking USTs;

(b) [aH] regulated USTs owned by the applicant have met the requirements of Subsection 19-6-412(2) and have a current certificate of compliance;

(c) the applicant has paid [aH] [UST]PST registration fees, interest, and penalties which have been assessed; and

(d) the applicant has paid [aH] applicable petroleum storage tank fees, interest, and penalties which have been assessed.

(4) To meet the requirements of Subsection 19-6-409(5), the loan request must be for [~~the purpose of~~]:

(a) upgrading [petroleum] USTs;

(b) replacing [petroleum] USTs; or

(c) permanently closing petroleum USTs.

(5) if an applicant requests a loan for closing USTs which will be replaced by aboveground storage tanks, the loan, if approved, will be only for closing the USTs.

(a) the security pledged by the applicant for a loan to replace USTs with aboveground storage tanks will be subject to the limitations in Section R311-212-6.

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

(1) When determined by the director to be necessary, [aH] applications received during a designated application period shall be prioritized by total points assigned.

(a) ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

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

(ii) the applicant's income is derived solely from operations at UST facilities.

(iii) the applicant owns or operates no more than two facilities.

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

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

(vi) loan proceeds will be used solely for replacing or upgrading petroleum USTs.

(vii) [aH] USTs at the facility are greater than 15 years old.

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

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

(3) Applications shall remain in priority order regardless of availability of funds until a new application period is declared.

(a) when a new application period begins, priority order of applications which have not been reviewed terminates.

(4) An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through 19-6-409(8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

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

(1) The applicant shall ensure that the loan application is complete.

(a) the completed application with supporting documents must contain ~~all~~ information required by the application.

(2) If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(3) ~~all~~~~e~~Costs incurred in processing the application shall be the responsibility of and paid for by the applicant including:

- (a) appraisals;
- (b) title reports; or
- (c) UCC-1 releases.

(i) the director may require payment of costs in advance.

(ii) the director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

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

- (a) review of any ~~and all~~ records and documents on file;
- (b) verification of any ~~and all~~ information provided by the applicant;
- (c) review of credit worthiness and security pledged; and
- (d) review of a site construction work plan.

(5) The applicant must close the loan within 30 days after the director conveys the loan documents for the applicant's signature.

(a) if the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply.

(b) an exception to the 30-day period may be granted by the director if the closing is delayed due to circumstances beyond the applicant's control.

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

(1) When an applicant applies for a loan of greater than \$30,000, the applicant must pledge for security personal or real property which meets or exceeds the following criteria:

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

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

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

- (a) a current written appraisal, performed by a State of Utah certified appraiser;
- (b) a current county tax assessment notice; or
- (c) other documentation acceptable to the director.

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

(4) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department.

(a) the director will accept no less than a second mortgage position on real property pledged for loan security.

(5) When~~ever~~ a corporation seeks a loan, its principals must guarantee the loan personally.

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

(7) Aboveground storage tanks and real property on which they are located will not be acceptable as security.

(8) USTs and the real property on which they are located will not be acceptable as security unless:

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

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

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

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

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

(2) The director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins.

(a) the initial disbursement shall be for the lesser of 40% of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done.

(b) disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and [~~all~~] paperwork and notifications have been received by the director.

(i) if an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the [~~D~~]director, following the initial disbursement.

(ii) disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the director, following the initial disbursement.

(c) if work is not initiated or completed within the time periods established in Subsection R311-212-7(2)(a), the loan balance must be paid within 30 days of notice provided by the director.

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

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

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

(1) The director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8)(b)(ii).

(2) Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay [~~all~~] interest and principal in full.

(a) the initial installment payment shall be due on a date established by the director.

(b) subsequent installment payments shall be due on the first day of each month.

(i) a notice of payment and due date shall be sent for each subsequent payment.

(c) non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

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

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

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

(6) The penalty for late loan payments shall be 10% of the payment due.

(a) the penalty shall be assessed and payable on payments received by the director more than five days after the due date.

(b) a penalty shall be assessed only once on a given late payment.

(7) Payments are considered received the day of the U.S. Postal Service postmark date or receipt date for payments delivered to the director by methods other than the U.S. Postal Service.

(8) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

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

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

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

(1) Loans may be considered in default when:

(a) two consecutive payments are past due by 30 days or more;

(b) when the applicant's ability to receive payments for claims against the Fund lapses; or

(c) if the certificate of compliance lapses or is revoked.

(2) Lapsing under Subsection R311-206-7(5) will not be considered as grounds for default for USTs which are permanently closed.

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

(4) The director need not give notice of default ~~prior to~~ before declaring the full amount due and payable.

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

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

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

(a) Loan Application version 7/14/16

(b) Balance Sheet version 7/29/14

(c) Loan Agreement version 7/29/14

(d) Corporate Authorization version 7/29/14

(e) Promissory Note version 7/29/14

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

(g) Security Agreement version 7/29/14

(h) Hypothecation Agreement version 7/29/14

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

(j) Assignment version 7/29/14

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

(l) Trust Deed version 7/29/14

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

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

(2) The director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process.

(3) The director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

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

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

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

**Date of Last Change: September 13, 2021**

**Notice of Continuation: March 8, 2022**

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

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD**  
**Executive Summary**  
**Final Adoption**  
**Amendments to UAC R313-12-3 and R313-19-100**  
**May 12, 2022**

<b>What is the issue before the Board?</b>	Approval from the Board is needed for final adoption of changes to R313-12-3, <i>Definitions</i> , and R313-19-100, <i>Transportation</i> , to incorporate federal regulatory changes made by the NRC to the federal radioactive materials regulations in 2015 (80 FR 33987) and 2019 (84 FR 65639). The changes are necessary to maintain regulatory compatibility with the NRC as required because Utah is an Agreement State with the NRC.
<b>What is the historical background or context for this issue?</b>	At the Board meeting on March 10, 2022, the Board approved the proposed changes to R313-12-3 and R313-19-100 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed changes were published in the April 1, 2022, issue of the Utah State Bulletin (Vol. 2022, No. 7).  Selected pages from the Utah State Bulletin showing the publication of the proposed changes follow this Executive Summary.  The public comment period for this rulemaking ended on May 2, 2022. No comments were received.
<b>What is the governing statutory or regulatory citation?</b>	The Board is authorized under Subsections 19-3-103.1 and 19-3-104 to make rules to meet the requirements of federal law relating to radiation control to ensure the radiation control program is qualified to maintain primacy from the federal government and that are necessary to implement the provisions of the Radiation Control Act.  The rule changes also meet existing DEQ and state rulemaking procedures.
<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 the Board approve final adoption of the changes to UAC R313-12-2 and R313-19-100 as published in the April 1, 2022, issue of the Utah State Bulletin and set an effective date of May 16, 2022.
<b>Where can more information be obtained?</b>	Please contact Tom Ball by email at <a href="mailto:tball@utah.gov">tball@utah.gov</a> or by phone at (801) 536-0251.

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed March 02, 2022, 12:00 a.m. through March 15, 2022, 11:59 p.m.

Number 2022-07  
April 01, 2022

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 Government Operations, 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 801-957-7110. 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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Utah state bulletin.

Semimonthly.

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- I. Utah. Office of Administrative Rules.

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(i) LEA expenditures shall be reasonable and necessary to sustain the College and Career Awareness program;

(ii) LEA expenditures shall be adequately documented;

~~(iii) an LEA may not use for personnel costs;~~

~~(iii)iv) an LEA may not use funds to cover the cost of goods and services for teacher personal use, such as teacher equipment, materials, and supplies;~~

~~(iv)y) an LEA may not use funds for costs associated with:~~

(A) entertainment;

(B) amusement;

(C) diversion;~~and~~

(D) social activities;~~and~~

(E) incentives;

(F) marketing materials; or

(G) thank you gifts; and

(vi) an LEA may only use funds for costs that will directly achieve program outcomes for students.

(b) Notwithstanding, Subsection (1)(a), an LEA may use up to 15% of available funds for teachers ~~and counselors and administrators~~ to participate in on~~-~~going professional development sponsored by the Board.

(2) An LEA shall meet all requirements of this ~~R277-916~~ rule ~~in order~~ to receive College and Career Awareness funding.

(3) College and Career Awareness funds shall be allocated to an LEA for an approved school using a base amount per school.

(4) The Superintendent shall distribute funds remaining after funds are distributed under Subsection (3) to approved schools, based on the prior school year's October 1 grade 7 enrollment.~~enrollment in grade 7 to approved schools based on the prior year's October 1 enrollment report for the previous year.~~

(5) An LEA shall annually complete a funding application with assurances of each school meeting College and Career Awareness standards.

(6) The Superintendent shall annually provide training to personnel from each school receiving funds under this Subsection (3).

(7) The Superintendent shall allocate continued funding to an LEA based on the LEA's success in meeting established standards.

**R277-916-4. Standards.**

(1) An LEA may qualify for College and Career Awareness funds consistent with the following:

(a) College and Career Awareness ~~program funds may not be used for personnel costs~~ standards are implemented in their entirety regardless of LEA scheduling;

~~(b) [a school shall teach 180 days of College and Career Awareness as a stand alone course with distinct credit, incorporating each element set forth in Subsection R277-916-2(1);~~

~~(c) College and Career Awareness teachers and counselors shall have appropriate licenses and endorsements;~~

~~(d)e) a school shall utilize the services of a WBL coordinator, where available, to integrate grade level appropriate WBL activities into College and Career Awareness~~;~~~~

~~(e)d) if a WBL coordinator is not available, the College and Career Awareness team shall plan and provide WBL activities;~~

~~(f)e) a school shall integrate [career development applications into the College and Career Awareness program and use] the services of a school counselor in the program;~~

~~(g)f) an LEA shall support staff development activities relevant to the core College and Career Awareness content adopted by the Board; and~~

~~(h)g) a College and Career Awareness [personnel] team in a school shall fully participate in ~~a program evaluation every four years.~~~~

~~(i) evaluating the current program;~~

~~(ii) recommending changes or modifications; and~~

~~(iii) pilot testing and implementing new activities, materials, and resources; and~~

~~(i) College and Career Awareness personnel shall participate in the CTE Program Approval evaluation every three years.]~~

**KEY: college and career awareness, public schools**

**Date of Last Change: 2022[April 10, 2017]**

**Notice of Continuation: February 9, 2022**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-507; 53F-2-311**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R313-12-3	Filing ID 54410

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tom Ball	801-536-0251	tball@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R313-12-3. Definitions
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
On June 12, 2015, the NRC published in the Federal Register (80 FR 33987) final revisions to the federal radioactive materials regulations regarding the packaging and transportation of radioactive material. These amendments made conforming changes to the NRC's regulations based on the International Atomic Energy Agency's (IAEA) 2009 standards for the international

transportation of radioactive material and resulted in maintaining consistency with the U.S. Dept. of Transportation's regulations, which were promulgated on July 11, 2014 (79 FR 40590). In addition, the NRC amended the federal regulations to re-establish restrictions on radioactive materials that qualify for the fissile material exemption, clarify requirements, update administrative procedures, and make editorial changes.

In Section R313-12-3, the definition of "Special form radioactive material" is amended to match the corresponding federal regulatory definition in 10 CFR 71.4, as revised by the NRC on June 12, 2015, in order to maintain regulatory compatibility with the NRC, as required as an Agreement State with the NRC.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The amendment updates the definition of "Special form radioactive material" so that it is current with the definition as it appears in the federal regulations. In addition, the Division of Waste Management and Radiation Control, Radiation has corrected typographical and formatting errors in this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

There is no cost or savings impact to the state budget because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility.

**B) Local governments:**

There is no cost or savings impact to local governments because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

There is no cost or savings impact to small businesses because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There is no cost or savings impact to non-small businesses because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

There is no cost or savings impact to persons other than small businesses, non-small businesses, state, or local governments because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for persons affected by these changes because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There is no fiscal impact on businesses because the proposed changes to the definition of "special form radioactive material" do not create any license conditions or rule requirements that fall within the regulatory jurisdiction of an Agreement State, such as Utah. Rather, the referenced conditions and requirements within the definition are reserved for the exclusive regulatory jurisdiction of the NRC, but nonetheless are required to be adopted as a matter of regulatory compatibility. Kimberly D. Shelley, Executive Director

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 19-3-104	Section 19-6-104	

**Public Notice Information**

<b>9. 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. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/02/2022

<b>10. This rule change MAY become effective on:</b>	05/09/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Douglas J. Hansen, Division Director	<b>Date:</b>	03/10/2022
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**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**

**R313-12. General Provisions.**

**R313-12-3. Definitions.**

As used in ~~[these rules]~~ Rules R313-12, R313-14 through R313-19, R313-21, R313-22, R313-24 through R313-26, R313-28, R313-30, R313-32, R313-34 through R313-38 and R313-70, these terms shall have the definitions set forth ~~[below]~~ in Section R313-12-3. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced radioactive material" means material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

## NOTICES OF PROPOSED RULES

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15[;]; or

(b) To ~~such~~ a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6[~~percent~~] % of the annual limit on intake (ALI), or 12 DAC[-]-hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside ~~[for the purpose of receiving, using, or storing] to receive, use, or store~~ radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Division of Waste Management and Radiation Control under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, ~~[in vivo counting]~~, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Waste Management and Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the

radiation incident to the process of producing or utilizing special nuclear material;

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(c) (i) a discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) material that

(A) has been made radioactive by use of a particle accelerator; and

(B) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) a discrete source of naturally occurring radioactive material, other than source material, that

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, has determined would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commencement of construction" means taking any action defined as "construction" or any other activity at the site of a facility subject to these rules that have a reasonable nexus to radiological health and safety.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same

geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium ~~must~~ shall be located at an educational institution, a Federal facility, or a medical facility.

"Construction" means the installation of wells associated with radiological operations; for example, production, injection, or monitoring well networks associated with in[-]situ recovery or other facilities; the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to these rules that are related to radiological safety or security. The term "construction" does not include:

(a) changes for temporary use of the land for public recreational purposes;

(b) site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;

(e) excavation;

(f) erection of support buildings; for example, construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings; for use in connection with the construction of the facility;

(g) building of service facilities; for example, paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines;

(h) procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or

(i) taking any other action that has no reasonable nexus to radiological health and safety.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of  $3.7 \times 10^{10}$  to the tenth power disintegrations or transformations per second (dps or tps).

"Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" ( $H_d$ ), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter ( $1000 \text{ mg/cm}^2$ ).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See [s]Sections 58-69-101 through 58-69-806, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Diffuse source" means a radionuclide that has been unintentionally produced or concentrated during the processing of materials for use for commercial, medical, or research activities.

"Director" means the Director of the Division of Waste Management and Radiation Control.

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" ( $H_T$ ), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" ( $H_E$ ), means the sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ), and the weighting factor ( $w_T$ ), applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of  $dQ$  by  $dm$  where " $dQ$ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of " $dm$ " are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of

## NOTICES OF PROPOSED RULES

exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized~~[as the above term]~~, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including~~[, but not limited to,]~~ tests, surveys, and monitoring to

determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

"License" means a license issued by the Director in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Director.

"Licensing state" means a state which, ~~[prior to]~~ before November 30, 2007, was provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviewed state regulations to establish equivalency with the Suggested State Regulations and ascertained whether a State has an effective program for control of natural occurring or accelerator produced radioactive material.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes~~[, but is not limited to,]~~ radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one megaelectron volt. For purposes of these rules, "accelerator" is an equivalent term.

"Permit" means a permit issued by the Director in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Director in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17b-101 through 58-17b-806, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee, or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned [such]this responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32,

(1) the individual named as the "Radiation Safety Officer" [must]shall meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual [must]shall be identified as a "Radiation Safety Officer" on

(a) a specific license issued by the Director, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Director or is legally obligated to register with the Director pursuant to these rules and the Act.

"Registration" means registration with the Director in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189 and 49 CFR 390 through 397, as referenced in 49 CFR 177.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

NOTICES OF PROPOSED RULES

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from ~~any~~ licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with ~~the provisions of~~ Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals  $2.58 \times 10^{-4}$  coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Sealed source and device registry" means the national registry that contains all the registration certificates, generated by both NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per square centimeter).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 ~~percent~~ %), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements of 10 CFR 71.4 in effect on June 30, 1983, and constructed ~~prior to~~ before July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996, ~~[see 10 CFR 71 revised January 1, 1983]~~ 1996, and constructed before April 1, 1998, and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used. Any other special form encapsulation ~~must~~ shall meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to ~~the provisions of~~ Section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified ~~above~~ previously in this definition for the same kind of special nuclear material. The sum of ~~such~~ the ratios for all ~~of~~ the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$(175(\text{Grams contained U-235})/350) + (50(\text{Grams U-233}/200) + (50(\text{Grams Pu}/200)))$  is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, ~~such~~ this evaluation includes ~~but is not limited to,~~ tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules R313-12, R313-14 through R313-19, R313-21, R313-22, R313-24 through R313-26, R313-28, R313-30, R313-32, R313-34 through R313-38 and R313-70".

"Total effective dose equivalent" (TEDE) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development

Administration and to the Administrator thereof pursuant to [s]Sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to [s]Section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (b), (c), and (d) of the definition of byproduct material found in Section R313-12-3.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Director and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with ~~the provisions of~~ these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant ~~provided that~~ if the decision to make the change is made ~~not later than~~ before December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

**KEY: definitions, units, inspections, exemptions**

**Date of Last Change:** ~~2022~~~~[October 13, 2017]~~

**Notice of Continuation:** April 8, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-6-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R313-19-100	Filing ID 54411

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tom Ball	801-536-0251	tbball@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R313-19-100. Transportation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
On June 12, 2015, the NRC amended the federal radioactive materials regulations regarding the packaging and transportation of radioactive material. These amendments made conforming changes to the NRC's regulations based on the International Atomic Energy Agency's (IAEA) 2009 standards for the international transportation of radioactive material and resulted in maintaining consistency with the U.S. Dept. of Transportation's regulations, which were promulgated on July 11, 2014 (79 FR 40590). In addition, the NRC amended the federal regulations to re-establish restrictions on radioactive materials that qualify for the fissile material exemption, clarify requirements, update administrative procedures, and make editorial changes.
In December of 2019 the NRC amended its regulations to reflect internal organization changes and to make conforming amendments. These changes include removing all references to the Office of New Reactors because that office has merged with the Office of Nuclear Reactor Regulation, changing the names of divisions that are affected by the reorganization of the Office of Nuclear Material Safety and Safeguards (NMSS), and making conforming amendments throughout the regulations to reflect the office merger and the office reorganization.
Because Section R313-19-100 incorporates by reference 10 CFR Part 71, updating the date of the incorporation by reference from 2014 to 2020 results in incorporating the changes published by the NRC on June 12, 2015, August 14, 2015, and December 30, 2019. Additional changes

are proposed to account for the appropriate state equivalent jurisdictional authority and requirements.

In Subsection R313-19-100(5)(a), the proposed changes also update the date of incorporation by reference for references to selected parts of the U.S. DOT regulations in 49 CFR to incorporate the appropriate revisions made by DOT's final rule published on July 11, 2014 (79 FR 40590).

The proposed changes in Section R313-19-100 are necessary in order to maintain regulatory compatibility with NRC rules as an Agreement State with the NRC.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The amendments incorporate by reference new federal regulations and remove federal regulations from incorporations by reference that are no longer required. Additional conforming technical changes are made as needed. In addition, the Division of Waste Management and Radiation Control, Radiation has corrected typographical and formatting errors in this rule.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

There is no cost or savings impact to the state budget because the proposed changes to the rules do not create any new license conditions or rule requirements. The changes are required to be adopted to ensure regulatory compatibility.

**B) Local governments:**

There is no cost or savings impact to local governments because the proposed changes to the rules do not create any new license conditions or rule requirements. The changes are required to be adopted to ensure regulatory compatibility.

**C) Small businesses** ("small business" means a business employing 1-49 persons):

There is no cost or savings impact to small businesses because the proposed changes to the rules do not create any new license conditions or rule requirements. The changes are required to be adopted to ensure regulatory compatibility.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

There is no cost or savings impact to non-small businesses because the proposed changes to the rules do not create any new license conditions or rule

requirements. The changes are required to be adopted to ensure regulatory compatibility.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no cost or savings impact to persons other than small businesses, non-small businesses, state, or local governments because the proposed changes to the rules do not create any new license conditions or rule requirements. The changes are required to be adopted to ensure regulatory compatibility.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for person affected by these changes because the proposed changes to the rules do not create any new license conditions or rule requirements. The changes are required to be adopted to ensure regulatory compatibility.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There is no fiscal impact on businesses because the proposed changes to the rules do not create any new license conditions or rule requirements. The changes are required to be adopted to ensure regulatory compatibility.  
Kimberly D. Shelley, Executive Director

**6. A) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

Local Governments	\$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>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-3-104	Section 19-6-104	
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**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	10 CFR Part 71, Packaging and Transportation of Radioactive Material
<b>Publisher</b>	U.S. Publishing Office
<b>Date Issued</b>	January 1, 2020
<b>Issue, or version</b>	2020 annual edition

**B) This rule adds, updates, or removes the following title of materials incorporated by references:**

	Second Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	49 CFR Parts 107, 171 through 180, and 390 through 397
<b>Publisher</b>	U.S. Publishing Office
<b>Date Issued</b>	October 1, 2014
<b>Issue, or version</b>	2014 annual edition

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/02/2022

**10. This rule change MAY become effective on:** 05/09/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Douglas J. Hansen, Division Director	<b>Date:</b>	3/10/2022
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**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**

**R313-19. Requirements of General Applicability to Licensing of Radioactive Material.**

**R313-19-100. Transportation.**

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.0(d)(1), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, 71.19(a), 71.19(b), [71.19(c), 71.20]71.21 through 71.23, 71.47, 71.83, 71.85 introductory paragraph, 71.85(d), 71.87 through 71.89, 71.91(a), 71.91(c), 71.91(d), 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, 71.127, 71.129, 71.131, 71.133, 71.135, [through] 71.137, and Appendix A to Part 71 (~~2019~~2020) are incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following:
  - (a) In 10 CFR 71.4 the following definitions:
    - (i) "close reflection by water";
    - (ii) "licensed material";
    - (iii) "optimum interspersed hydrogenous moderation";
    - (iv) "spent nuclear fuel or spent fuel;"~~and~~
    - (v) "special form radioactive material", since this definition exists in Section R313-12-3; and

~~(v)~~(vi) "state."

(b) In 10 CFR 71.91(c) and 71.91(d), the phrase "certificate holder and applicant for a COC";

(c) In 10 CFR 71.101(a), the sentence "Each certificate holder and applicant for a package approval is responsible for satisfying the quality assurance requirements that apply to the design, fabrication, testing, and modification of package subject to this subpart;" and

(d) In 10 CFR 71.101(b), each instance of "certification holder, and applicant for a COC."

~~(2)~~ The substitution of the date reference "October 1, 2011" for "October 1, 2008".

~~(3)~~(2) The substitution of the following rule references:

NOTICES OF PROPOSED RULES

- (a) "Rule R313-36, [~~incorporating~~ 10 CFR 34.31(b) by reference~~]~~," for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);
  - (b) "Section R313-15-502" for reference to "10 CFR 20.1502";
  - (c) "Rule R313-14" for reference to "10 CFR Part 2 Subpart B";
  - (d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";
  - (e) "Subsection R313-15-906(5)" for reference to "10 CFR 20.1906(e)";
  - (f) "Subsection R313-19-100(5)" for "Sec.71.5";
  - (g)(i) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H"~~[except in 40 CFR 71.17(b), 71.20(b), 71.21(b), 71.22(b), 71.23(b)];~~
  - (ii) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "this subpart" in 71.101(a) and 71.101(c)(1).
  - (h) "10 CFR 71.0(c), 71.0(d)(1), 71.1(a), 71.3, 71.4, Subsection R313-19-100(5), Sections R313-19-1 and R313-19-5, [71.17(e)(2), 71.20(e)(2), 71.21(d)(2);] 71.83, 71.85 introductory paragraph, 71.85(d) through 71.89, 71.91(a), 71.91(c), 71.91(d), 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "subparts A, G, and H of this part";
  - (i) "10 CFR 71.47" for "subparts E and F of this part";~~and]~~
  - (j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "Sec. Sec. 71.101 through 71.137." in 71.101(b) and 71.105(a);
  - (k) "10 CFR 71.85(a) through (c)" for "paragraphs (a) through (c) of this section" in 71.85(d);
  - (l) "10 CFR 73.24" for "73.24 of this chapter" in 71.88(b);
  - (m) "71.14(a)" for "71.14" in 71.91(a);
  - (n) "R313-12-110" for "Sec. 71.1(a)" and for the NRC contact information in 71.101(c)(1) and 71.106(b); and
  - (o) "10 CFR 71.111" for "Sec. 71.111" in 71.135.
- ~~(4)(3)~~ The substitution of the following terms:
- (a) "Director" for:
    - (i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.17(b)~~[71.20(a)]~~, 71.21(a), 71.21(b), 71.22(a), 71.22(b), 71.23(a), 71.23(b), 71.91(c), and 71.101(c)(1);~~]~~
    - (ii) "NRC" in 10 CFR 71.101(f);~~]~~
    - (b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;
    - (c) [~~The Governor of Utah" for:~~
      - (i) "the governor of a State" in 71.97(a);
      - (ii) "each appropriate governor" in 10 CFR 71.97(e)(1);
      - (iii) "the governor" in 10 CFR 71.97(e)(3);
      - (iv) "the governor of the state" in 10 CFR 71.97(e);
      - (v) "the governor of each state" in 10 CFR 71.97(f)(1);
      - (vi) "a governor" in 10 CFR 71.97(e);
      - (d) "State of Utah" for "State" in 71.97(a), 71.97(b)(2), and 71.97(d)(4);
      - (e) "the Governor of Utah's" for:
        - (i) "the governor's" in 10 CFR 71.97(a), 71.97(e)(3), 71.97(e)(3)(iii), 71.97(e), and 71.97(f)(1);
        - (ii) "governor's" in 10 CFR 71.97(e)(1), and 71.97(e);
        - (f) ]"Specific or general" for "NRC" in 10 CFR 71.0(c);
        - (g)d "The Director at the address specified in SecR313-12-110" for reference to "ATTN: Document Control Desk, Director,

- Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);
- (h)e "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);
- (i)f "The material ~~must~~shall be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);
- (j)g "Licensee" for "licensee, certificate holder, and applicant for a COC"; and
- (k)h "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."
- (4) The insertion of "NRC-issued" in 10 CFR 71.17(c)(1) immediately before "Certificate of Compliance."
- (5) Transportation of licensed material
  - (a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (~~2009~~2014), appropriate to the mode of transport.
    - (i) The licensee shall particularly note DOT regulations in the following areas:
      - (A) Packaging--49 CFR part 173: subparts A<sub>2</sub> [~~49 CFR 173.1 through 49 CFR 173.13~~], B<sub>2</sub> [~~49 CFR 173.21 through 49 CFR 173.40~~], and I<sub>2</sub> [~~49 CFR 173.401 through 49 CFR 173.477~~].
      - (B) Marking and labeling--49 CFR part 172: subpart D<sub>2</sub> [~~49 CFR 172.300 through 49 CFR 172.338~~]; and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.
      - (C) Placarding--49 CFR part 172: subpart F<sub>2</sub> [~~49 CFR 172.500 through 49 CFR 172.560~~], especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.
      - (D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.
      - (E) Shipping papers and emergency information--49 CFR part 172: subparts C<sub>2</sub> [~~49 CFR 172.200 through 49 CFR 172.205~~] and G<sub>2</sub> [~~49 CFR 172.600 through 49 CFR 172.606~~].
      - (F) Hazardous material employee training--49 CFR part 172: subpart H<sub>2</sub> [~~49 CFR 172.700 through 49 CFR 172.704~~].
      - (G) Security plans--49 CFR part 172: subpart I<sub>2</sub> [~~49 CFR 172.800 through 49 CFR 172.804~~].
      - (H) Hazardous material shipper or carrier registration--49 CFR part 107: subpart G<sub>2</sub> [~~49 CFR 107.600 through 49 CFR 107.606~~].
    - (ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:
      - (A) Rail--49 CFR part 174: subparts A through D<sub>2</sub> [~~49 CFR 174.1 through 49 CFR 174.86~~], and K<sub>2</sub> [~~49 CFR 174.700 through 49 CFR 174.750~~].
      - (B) Air--49 CFR part 175.
      - (C) Vessel--49 CFR part 176: subparts A through F<sub>2</sub> [~~49 CFR 176.1 through 49 CFR 176.99~~], and M<sub>2</sub> [~~49 CFR 176.700 through 49 CFR 107.720~~].

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in Subsection R313-19-100(5)(a) [to the same extent] as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, [must]shall be filed with, or made to, the Director, [P.O.]PO Box 144850, Salt Lake City, Utah 84114-4850.

**KEY: licenses, reciprocity, transportation, exemptions**  
**Date of Last Change: 2022[September 13, 2021]**  
**Notice of Continuation: April 8, 2021**  
**Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R392-101	Filing ID 54412

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R392-101. Food Safety Manager Certification
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the Office of Administrative Rules' Rulewriting Manual for Utah. As required, the amendments to Rule R392-101 simplify this rule, remove outdated language and redundancies, and

provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

The amendments to Rule R392-101 provide technical and conforming changes throughout this rule and remove unnecessary and repetitive language.

In Section R392-101-2, added definition for "Time or Temperature Control Food" and amended definition for "Local Health Officer".

In Sections R392-101-3 through R392-101-9, the Department of Health (Department) has made nonsubstantive 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.

The Department made the following substantive amendments:

Subsection R392-101-8(4) was amended to clarify that a microenterprise home kitchen is not exempt from the requirements of this rule. This closes a loophole that was created when "microenterprise home kitchen" was defined in Section 26-15c-102.

Subsection R392-101-8(12) was amended to include a risk assessment evaluation as required by Section 26-15a-105(1)(k). The currently enacted rule does not have the risk assessment, as required.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

No anticipated cost or savings because the changes do not affect existing operations.

**B) Local governments:**

No anticipated cost or savings because the changes do not affect existing operations.

**C) Small businesses ("small business" means a business employing 1-49 persons):**

No anticipated cost or savings because the changes do not affect existing operations.

**D) Non-small businesses ("non-small business" means a business employing 50 or more persons):**

No anticipated cost or savings because the changes do not affect existing operations.

# WASTE MANAGEMENT AND RADIATION CONTROL BOARD

## Executive Summary

### Approval of Mammography Imaging Medical Physicists

May 12, 2022

<b>What is the issue before the Board?</b>	Approval of new, qualified Mammography Imaging Medical Physicist
<b>What is the historical background or context for this issue?</b>	<p>Individuals referred to as Mammography Imaging Medical Physicists (MIMP) must submit an application for review of qualifications to be certified by the Board. These physicists perform radiation surveys and evaluate the quality control programs of the facilities in Utah providing mammography examinations.</p> <p>The Division has received five new applications to be certified as MIMPs.</p> <p>Division staff has reviewed the applicants' qualifications and all the applicants meet the requirements detailed in R313-28-140.</p> <p>A list of the applicants follows this Executive Summary.</p>
<b>What is the governing statutory or regulatory citation?</b>	<p>In accordance with Subsection 19-3-103.1(2)(c) of the Utah Code Annotated, the Board shall review the qualifications of, and issue certificates of approval to, individuals who: (i) survey mammography equipment; or (ii) oversee quality assurance practices at mammography facilities.</p> <p>This statutory requirement was effective May 8, 2012.</p>
<b>Is Board action required?</b>	Yes.
<b>What is the Division Director's recommendation?</b>	The Director of the Division of Waste Management and Radiation Control recommends the Board issue a certificate of approval for the applicant reviewed and presented to the Board.
<b>Where can more information be obtained?</b>	Please contact Lisa Mechem, DVM, at (801) 536-4286.

MIMP New Applicants, May 2022

<b>Name</b>	<b>Name of School</b>	<b>Graduation Year</b>
Kristan T. Marshall, MS.	Georgia Institute of Technology	2005
Meredith S. Barbalho, MS	Georgia Institute of Technology	2001
Jeffrey K. Tays, MS, DABR	Georgia Institute of Technology	2002
Aaron Kelley, MS, ABSNM	Georgia State University	2011
William G. Fisher, MS	Arizona State University	1971