



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 April 13, 2023, 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

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

- I. Call to Order and Roll Call.
- II. Public Comments on Agenda Items.
- III. Declarations of Conflict of Interest.
- IV. Approval of the meeting minutes for the March 9, 2023 Board meeting Tab 1
(Board Action Item)
- V. Petroleum Storage Tanks Update..... Tab 2
- VI. Petroleum Storage Tank Rules **(Board Action Item)** Tab 3
 - A. Final adoption of proposed changes to Petroleum Storage Tank Rules R311-200, 202, and 206 **(Board Action Item)**.
- VII. Administrative Rules Tab 4
 - A. Final adoption of proposed changes to Radiation Control Rules UAC R313-16-230 to amend the process to apply for a registration of radiation machines to include an electronic form as well as a paper form **(Board Action Item)**.
- VIII. Director's Report.
- IX. Election of Board Chair and Vice Chair **(Board Action Item)**

(Over)

X. Other Business.

A. Miscellaneous Information Items.

B. Scheduling of next Board meeting (May 11, 2023).

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) 503-5618, Telecommunications Relay Service 711, or by email at "lwys@utah.gov"

Waste Management and Radiation Control Board Meeting Minutes
Utah Department of Environmental Quality
Multi-Agency State Office Building (Conf. Room #1015)
195 North 1950 West, SLC
March 9, 2023
1:30 p.m.

Board Members Participating at Anchor Location: Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Mark Franc, Steve McIff, Vern Rogers, Kim Shelley, Scott Wardle

Board Members Participating Virtually: Richard Codell and Danielle Endres

Board Members Absent/Excused: Nathan Rich and Shane Whitney

UDEQ Staff Members Participating at Anchor Location:

Brent Everett, Doug Hansen, Morgan Atkinson, Eric Baiden, Therron Blatter, Tyler Hegburg, Jalynn Knudsen, Arlene Lovato, Stevie Norcross, Elisa Smith, Raymond Wixom

Others Attending at Anchor Location: Steve Gurr and Chris Root

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

I. Call to Order and Roll Call.

Chairman Mickelson called the meeting to order at 1:30 pm. Roll call of Board members was conducted, see above.

II. Public Comments on Agenda Items – None.

III. Declarations of Conflict of Interest.

Vern Rogers recused himself from voting on agenda item VII. Low Level Radioactive Waste - A. *EnergySolutions* request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. *EnergySolutions* seeks authorization to treat waste containing hazardous contaminants and Polychlorinated Biphenyls (PCBs) (Board Action Item).

IV. Approval of the meeting minutes for the February 9, 2023 Board meeting (Board Action Item).

It was moved by Dennis Riding and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve the February 9, 2023 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 preliminary estimate of the cash balance of the Petroleum Storage Tank (PST) Fund for the end of February 2023, is \$29,445,217.00. The actual cash balance of the PST Fund at the end of January 2023, is \$28,911,563.00. The DERR continues to watch the balance of the PST Fund closely to ensure sufficient cash is available to cover qualified claims for releases. The DERR will monitor the impact of adding aboveground petroleum storage tanks on the Fund for their financial responsibility for future releases.

The DERR is in the middle of the public comment period for changes to the PST Rules that was approved by the Board at the January 2023 meeting. The DERR will bring this item before the board in the future to seek final adoption of these rule changes.

Mr. Everett also reported that during the 2023 Legislative Session, no legislation was passed that impacts the portions of the DERR overseen by the Board.

There were no comments or questions.

VI. Administrative Rules.

- A. Final adoption of changes to Utah Administrative Code R315-101 of the Hazardous Waste Rules amending the rule to include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments based on EPA guidance (**Board Action Item**).

Eric Baiden, Risk Assessor/Toxicologist, in the Division of Waste Management and Radiation Control, reviewed the request for the Board's final adoption of changes to proposed rule changes to Utah Administrative Code (UAC) R315-101 of the Hazardous Waste Rules.

Dr. Baiden recapped the progression of this rulemaking action.

The proposed rule was originally published for public comment in November of 2021 and the Division addressed the comments received during the November public comment period. The entire proposed rule was again published for a second public comment period in October of 2022 (this was required because the 120-day window to complete the rulemaking had passed). The Division addressed the comments received during the October public comment period and changes were made to the proposed rule.

In the January 12, 2023 Board meeting, the Board approved the proposed changes to be filed with the Office of Administrative Rules for publication in the *Utah State Bulletin* (if an agency determines that changes need to be made to a proposed rule and are able to file the changes within the 120-day window, they can file a change to proposed rule and only the new changes being made are considered open for public comment).

The proposed changes were published in the February 1, 2023 issue of the *Utah State Bulletin*. The public comment period ran from February 1, 2023 to March 3, 2023. No comments were received.

The Director recommends the Board approve final adoption of the changes to UAC R315-101 as published in the February 1, 2023 issue of the *Utah State Bulletin* and set an effective date of March 15, 2023.

It was moved by Scott Wardle and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve for final adoption of the proposed changes to Utah Administrative Code R315-101 as published in the February 1, 2023 issue of the *Utah State Bulletin* and set an effective date of March 15, 2023.

VII. Low-Level Radioactive Waste.

A. **EnergySolutions request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to treat waste containing hazardous contaminants and Polychlorinated Biphenyls (PCBs) (Board Action Item).**

Tyler Hegberg, Environmental Scientist, in the Division of Waste Management and Radiation Control Board reviewed EnergySolutions, LLC request to the Director of the Division of Waste Management and Radiation Control received on January 25, 2023 for a site-specific treatment variance from the Utah Hazardous Waste Rules for waste with Polychlorinated Biphenyls (PCBs) as underlying hazardous constituents (UHCs) requiring treatment.

This matter was presented to the Board as an information item in the February 9, 2023, Board meeting. EnergySolutions is requesting an exemption from Utah Administrative Code R315-268-40 for a site-generated waste that carries characteristic and listed hazardous waste codes while also containing PCBs as an underlying hazardous constituent (UHC) above the universal treatment standard of 10 milligrams per kilogram (mg/kg).

EnergySolutions is requesting to treat the waste for all RCRA Hazardous waste codes except for the PCBs as UHCs, since EnergySolutions' mixed waste landfill cell is a regulated hazardous waste landfill permitted by the State of Utah. Because the cell is regulated, if the waste did not contain any of the RCRA hazardous waste codes, the PCB waste could be disposed of in the mixed waste cell without any additional treatment, therefore making treatment of the PCBs technically inappropriate and not required for final disposal of the site generated wastes.

This variance is being requested for up to approximately 12 tons of site generated waste at the Clive Mixed Waste Facility that may be circumstantially contaminated with PCBs in concentrations of up to 19.4 ppm (mg/kg) based on last year's detected observations. Several examples of site-generated wastes include baghouse dust, sump clean-out material, and decontamination sludges. General site activities involving these PCBs include, but are not limited to, repackaging waste containers and shredding PCB capacitors.

EnergySolutions has successfully proven to treat these wastes through the development of treatment formulas and analytical data that shows that all these contaminants, except for PCBs, have met treatment standards in the treatment runs prior to final disposal of wastes.

EnergySolutions has received approval on these types of variance requests multiple times dating back to February 2012.

The notice was published in the *Salt Lake Tribune*, *Deseret News*, and the *Tooele Transcript Bulletin* on February 1, 2023. A 30-day public comment period started February 2, 2023 and ended March 3, 2023. No comments were received.

Danielle Endres asked for clarification regarding the information identifying the waste as "circumstantially contaminated" and requested additional information regarding the waste meeting the universal treatment standard of 10 milligrams per kilogram.

Steve Gurr, EnergySolutions representative, explained the treatment process and explained that if the PCB waste did not contain RCRA hazardous waste codes, but contained the same PCB concentrations, it could be disposed of in EnergySolutions Mixed Waste Landfill Cell without additional treatment. Treatment of the PCBs within this waste stream is very difficult and EnergySolutions is requesting the variance to only treat the hazardous constituents (hazardous waste

codes) by bringing them below the land disposal restrictions/required standards. The final disposal of the waste will occur at EnergySolutions Mixed Waste Disposal Cell.

Danielle Endres clarified that because the waste concentrations differ in levels from below and to up to 19.4 ppm as the worst-case scenario, the waste may or may not be within the treatment standard levels and that is why the variance is being requested. Mr. Gurr concurred with Ms. Endres.

Mark Franc stated that the PCB waste is brought in with certain hazardous waste constituents and is then treated to below the required treatment standards. However, if the PCB waste did not contain the hazardous waste constituents it would not require to be treated and could be landfilled.

Mr. Gurr concurred with Mr. Franc and further clarified that EnergySolutions could accept the PCB waste at concentrations of 19.4 ppm at their low-level waste embankment, but because it has the hazardous waste codes associated with the waste, it is required to meet the universal treatment standard of 10 mg/kg.

Mark Franc stated that the only reason that treatment is required is because of the other hazardous constituents, not the PCBs. Mr. Gurr concurred with Mr. Franc.

Danielle Endres asked if another facility was treating the PCB wastes that contain the hazardous waste codes, would they be required to treat the waste to the same treatment standards?

Mr. Gurr stated that the same treatment standards are required by other facilities receiving this type of waste contaminated with hazardous waste codes. If the facility was only receiving PCB wastes, it could also be accepted at its low-level radioactive waste landfill without meeting the treatment standards. The treatment standard of 10 mg/kg apply to all low-level radioactive waste facilities.

Danielle Endres stated that the main concern is in regard to other waste (waste containing the hazardous waste codes) rather than PCB waste. Mr. Gurr concurred with Ms. Endres.

It was moved by Mark Franc and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve EnergySolutions request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to treat waste containing hazardous contaminants and Polychlorinated Biphenyls (PCBs). Vern Rogers abstained from voting.

VIII. Director's Report.

Director Hansen informed the Board of three bills that passed during the 2023 Utah Legislative Session that impact the Division. These bills are currently awaiting the Governor's signature.

House Bill (HB) 110 Waste Tire Recycling Fund Amendments, sponsored by Rep. Casey Snider
This bill essentially undoes legislation that was passed at the end of the 2022 Utah Legislative Session. This bill modifies provisions related to waste tire recycling by repealing provisions related to a certain municipal landfill. Specifically, this municipal solid waste landfill would no longer be required to deposit disposal fees into the Waste Tire Recycling Fund.

House Bill (HB) 493 Solid Waste Management Amendments, sponsored by Rep. Tim Jimenez
This bill modifies definitions relating to solid waste. This bill defines terms and amends the definition of solid waste. Specifically, the definition of "Advanced recycling" provides for a company to take post-consumer plastics that have been sorted and gathered as plastics. These plastics would be excluded from the definition of solid waste because they are a feedstock in operations that would transform those polymers into other useful products.

Senate Bill (SB) 201 Radon Notice Amendments, sponsored by Rep Katy Hall

Director Hansen informed the Board that this bill requires the Division to provide a fact sheet to county treasurers about radon that is to be included with the property tax notices sent out to the residents in their county. The fact sheet would include information about radon in their homes, etc. It is anticipated that an electronic link will be provided as well.

Director Hansen informed that Board that many of the bills that did not pass had to do with recycling, as it seemed like the topic of recycling was of universal interest. Because of that, the Division anticipates reaching out to those interested in the topic of recycling and coordinating with them on some of their good intentions in hopes of coordinating efforts to continue in making a difference in furthering the recycling efforts in the State of Utah. Director Hansen stated that some Board members had previously reached out to him regarding some of the recycling bills that did not pass, and he informed the Board that as the opportunity arises, he will reach out to those Board members for their input as the Division addresses improving recycling efforts in the State of Utah.

Director Hansen stated that he felt this was a positive legislative session for the Division as he looks forward to implementing what the Division has been tasked to complete. Director Hansen stated he will soon begin planning and preparing for next year's Legislative session.

Executive Director Shelley reported that overall, the 2023 Legislative session was a success. As the DEQ received significant funding in its various programs, as well as the Governor's proposed budget was fully funded. Executive Director Shelley also reported that funding for state employees to receive compensation increases was approved and the DEQ is looking forward to compensating those employees currently working in DEQ. Executive Director Shelley commented that with the current tight labor market, this compensation increase will help in retaining employees within DEQ and will help the DEQ to continue to attract high caliber employees. Executive Director Shelley stated she is grateful for this recognition that the DEQ employees deserve.

Vern Rogers asked about proposed legislation regarding adjusting how an administrative law judge (ALJ) is selected as it potentially impacts Boards and licensees.

Executive Director Shelley informed the Board that Senate Bill 147 did pass and thanked Senator McKell for her efforts in sponsoring this bill. This bill basically modifies the criteria for appointing an administrative law judge as it removes the requirement of an ALJ to have a current bar license/be a member of good standing of the Utah State Bar. It did not remove any of the legal requirements ALJs are required to retain. Executive Director Shelley stated that she is hopeful that this will allow the DEQ to pull from a larger pool for ALJs, as the DEQ has encountered struggles in this regard as it is difficult to find ALJs in the current labor market.

IX. Other Business.

A. Miscellaneous Information Items – None to report.

B. Scheduling of next Board meeting (April 13, 2023).

The next meeting is scheduled for April 13, 2023 at the Utah Department of Environmental Quality, Multi-Agency State Office Building.

Interested parties can join via the Internet: meet.google.com/gad-sxsd-uvs
Or by phone: (US) +1 978-593-3748 PIN: 902 672 356#

X. Adjourn.

The meeting was adjourned at 1:55 p.m.

PST STATISTICAL SUMMARY

March 1, 2022 -- February 28, 2023

PROGRAM

	March	April	May	June	July	August	September	October	November	December	January	February	(+/-) OR Total
Regulated Tanks	4,157	4,178	4,176	4,182	4,178	4,188	4,184	4,191	4,190	4,196	4,188	4,200	43
Tanks with Certificate of Compliance	4,061	4,057	4,057	4,071	4,061	4,065	4,072	4,073	4,085	4,083	4,089	4,088	27
Tanks without COC	96	121	119	111	117	123	112	118	105	113	99	112	16
Cumulative Facilities with Registered A Operators	1,284	1,288	1,286	1,286	1,288	1,285	1,279	1,278	1,276	1,282	1,280	1,279	98.01%
Cumulative Facilities with Registered B Operators	1,285	1,289	1,287	1,287	1,289	1,287	1,280	1,279	1,277	1,282	1,281	1,281	98.16%
New LUST Sites	9	7	6	7	9	11	5	10	8	9	9	9	99
Closed LUST Sites	13	14	13	9	2	12	7	3	14	3	7	8	105
Cumulative Closed LUST Sites	5431	5447	5454	5455	5463	5474	5474	5491	5494	5501	5509	5524	93

FINANCIAL

	March	April	May	June	July	August	September	October	November	December	January	February	(+/-)
Tanks on PST Fund	2,628	2,619	2,609	2,613	2,651	2,655	2,645	2,636	2,635	2,628	2,623	2,621	(7)
PST Claims (Cumulative)	705	706	705	710	710	711	711	711	711	711	711	711	6
Equity Balance	-\$1,826,879	-\$1,634,540	-\$986,270	-\$639,953	-\$646,753	-\$295,722	-\$127,174	-\$281,835	\$80,750	\$274,341	\$739,913	\$1,273,567	\$3,100,446
Cash Balance	\$25,570,649	\$25,762,988	\$26,411,258	\$26,757,575	\$26,750,775	\$27,693,250	\$27,524,702	\$27,889,815	\$28,252,400	\$28,445,991	\$28,911,563	\$29,445,217	\$3,874,568
Loans	0	0	1	0	0	1	5	0	0	0	0	0	0
Cumulative Loans	121	121	122	122	122	123	128	128	128	128	128	128	7
Cumulative Amount	\$4,738,367	\$4,738,367	\$4,740,989	\$4,740,989	\$4,740,989	\$5,040,989	\$6,014,420	\$6,014,420	\$6,014,420	\$6,014,420	\$6,014,420	\$6,014,420	\$1,276,053
Defaults/Amount	0	0	0	0	0	1	0	0	0	0	0	0	0

	March	April	May	June	July	August	September	October	November	December	January	February	TOTAL
Speed Memos	76	59	78	65	32	47	77	105	60	31	42	44	716
Compliance Letters	16	15	9	6	8	8	7	7	9	9	5	3	102
Notice of Intent to Revoke	2	0	0	0	0	0	0	0	0	0	0	0	2
Orders	2	2	0	0	0	0	0	0	0	qq	0	0	4

Utah Waste Management and Radiation Control Board Action Item Final Adoption of Proposed changes to R311, Utah Petroleum Storage Tank Rules

What is the issue before the Board?

The Division of Environmental Response and Remediation (DERR) requests that the Utah Waste Management and Radiation Control Board approve proposed changes to the Utah Petroleum Storage Tank rules for final adoption, with an effective date of April 14, 2023. The Board approved the proposed changes for publication and public comment during its February 2023 meeting.

Background:

On July 14, 2022, the Waste Management and Radiation Control Board adopted changes to the Underground Storage Tank rules to address rulemaking requirements for Aboveground Petroleum Storage Tanks (APST) that were mandated by the passage of Senate Bill SB-40, Storage Tanks Amendments, in the 2021 legislative session. As the Division of Environmental Response and Remediation (DERR) has begun implementing the requirements of SB-40 and the recent changes to R311, the need for a few additional changes to R311 has become apparent. These proposed changes address the following issues:

1. The definition of an APST. As AST owner/operators began notifying the DERR of their above ground storage tanks it became apparent that there were several types of ASTs that meet the statutory definition of an APST but, in the Division's opinion, were not tanks the legislature intended to regulate. The changes to the APST definition exclude these ASTs from the regulation.
2. Setting the dollar amount of the financial responsibility (FR) requirement. The rule change completed in July 2022 allowed APSTs to utilize any of the underground storage tank FR mechanisms identified in 40 CFR 280 to meet the FR requirement established by SB-40, but failed to clearly establish the dollar amount of FR required. This change sets Utah's FR requirement for APSTs to the amount required by the federal UST regulation under 40 CFR 280 Subpart H.
3. Establish requirements and processes for APST release reporting, investigation, confirmation, response, and corrective action. This change establishes the same requirements and processes for APSTs as that required for federally regulated USTs under 40 CFR 280 Subparts E and F.

Because SB-40 requires all APSTs to meet financial responsibility requirements and obtain a certificate of compliance by July 1, 2023, addressing these issues requires immediate attention so the updated rule will be in place before the July 1 deadline.

The rules to be amended are:

R311-200 Petroleum Storage Tanks: Definitions.

R311-202 Federal Underground Storage Tank Regulations.

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

Notice of the proposed changes and the public comment period was sent to Petroleum Storage Tank (PST) owner/operators, certified individuals, and other persons interested in PST rulemaking and was posted on the DEQ Public Notice webpage. The proposed changes were published in the *Utah State Bulletin* on March 1, 2023. The public comment period was held March 1, 2023 to March 31, 2023,

with a public hearing to receive comments on the proposed changes held on March 13, 2023. No comments were received at the hearing. One response to the Notice of Rulemaking email was received. This response was not a comment on the proposed changes, but rather was a question as to the applicability of SB-40 to APSTs used to store diesel for emergency power generation. DERR staff responded with an answer to the question. Because this was not a comment on the proposed changes that are under consideration, no additional action is appropriate.

What is the governing statutory or regulatory citation?

The Board is authorized under Subsection 19-6-403(1)(a) to make rules that provide for the administration of the petroleum storage tank program and more specifically, compliance with the Underground Storage Tank Act by an APST. Furthermore, changes to the Underground Storage Tank Act made by SB-40 instruct the Board to make rules specific to methods for APST owner/operators to demonstrate financial responsibility (19-6-407(2)). The proposed rule changes also meet existing DEQ and state rulemaking procedures.

Is Board action required?

Yes, Board action is required for final adoption of the rule changes published in the March 1, 2023 issue of the Utah State Bulletin with an effective date of April 14, 2023.

What is the Division Director's recommendation?

The Director recommends that the Board adopt the rule changes published in the March 1, 2023 issue of the Utah State Bulletin with an effective date of April 14, 2023.

Where can more information be obtained?

For questions or additional information visit <https://deq.utah.gov/environmental-response-and-remediation/public-comment-period-on-proposed-changes-to-r311-petroleum-storage-tank-rules> or contact David Wilson (385) 251-0893, djwilson@utah.gov.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Final Adoption
UAC R313-16-230
April 13, 2023

<p>What is the issue before the Board?</p>	<p>Approval from the Board is needed for final adoption of changes to UAC R313-16-230 to amend the form that an application for registration of radiation machines to include an electronic form as well as a paper form.</p>
<p>What is the historical background or context for this issue?</p>	<p>At the Board meeting on February 9, 2023, the Board approved the proposed changes to UAC R313-16-230 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin.</p> <p>The proposed changes were published in the March 1, 2023, issue of the Utah State Bulletin (Vol. 2023, No. 05).</p> <p>Selected pages from the Utah State Bulletin showing the publication of the proposed changes follow this Executive Summary.</p> <p>The public comment period for this rulemaking ended on March 31, 2023. No comments were received.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>The Board is authorized under Subsections 19-3-103.1 and 19-3-104 to make rules that are necessary to implement the provision of the Radiation Control Act.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
<p>Is Board action required?</p>	<p>Yes. Board approval for final adoption of the rule changes is necessary.</p>
<p>What is the Division Director's recommendation?</p>	<p>The Director recommends the Board approve final adoption of the changes to UAC R313-16-230 as published in the March 1, 2023, <i>Utah State Bulletin</i> and set an effective date of April 17, 2023.</p>
<p>Where can more information be obtained?</p>	<p>Please contact Tom Ball by email at tball@utah.gov or by phone at (801) 536-0251.</p>

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed February 02, 2023, 12:00 a.m. through February 15, 2023, 11:59 p.m.

Number 2023-05
March 01, 2023

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.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

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- (a) notify the director of the intent to participate in the EAP;
- (b) comply with the requirements of Subsection 19-6-428(3); and
- (c) meet the requirements of Section R311-206-3 to qualify for a new certificate of compliance.

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 EAP, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation," which is 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 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 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 incorporated by reference.

(7) A facility that begins participation in the 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 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: 2023|September 27, 2022|
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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R313-16-230	Filing ID: 55240

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Room number:	2nd Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, UT 84114-4880	
Contact persons:		
Name:	Phone:	Email:
Tom Ball	801-536-0251	tball@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:
R313-16-230. Registration of Radiation Machines
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
As currently written, Subsection R313-16-230(3)(a) requires that a person wanting to register an ionizing radiation producing machine must use form DWMRC-10. The Division of Waste Management and Radiation Control, Radiation (Division) is in the process of developing an online, electronic system for the submission of a registration application that will be more efficient and more convenient for applicants. The current rule does not allow for the electronic process.
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):
Subsection R313-16-230(3)(a) is being revised to provide flexibility to applicants by allowing applications to be submitted electronically or by using the paper form. Additionally, formatting errors are being corrected and minor wording changes are being made in this rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this amended rule because the Division will still review and process registration applications no matter what method is used to submit them.

Any state government agencies that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

B) Local governments:

It is not anticipated that there will be any cost to local governments because of this amended rule.

Any local governments that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

It is not anticipated that there will be any cost to small businesses because of this amended rule.

Small businesses that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

It is not anticipated that there will be any cost to non-small businesses because of this amended rule.

Non-small businesses that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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**):

It is not anticipated that there will be any cost to persons other than small businesses, non-small businesses, state, or local governments because of this amended rule.

Persons other than small businesses, non-small businesses, state, or local governments that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

There will not be any additional compliance costs for affected persons because of this amended rule.

Persons who need to register an ionizing radiation producing machine must still submit an application. This amended rule simply provides options for the submission of the application.

G) 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
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	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

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

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

Citation Information

6. 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

Public Notice Information

8. 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: 03/31/2023

9. This rule change MAY become effective on: 04/17/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Douglas J. Hansen, Director	Date:	02/09/2023
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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.

R313-16-230. Registration of Radiation Machines.

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the [D]director.

(2) Registration shall be required annually in accordance with a schedule established by the [D]director.

(3) Registration [for the facility] is achieved when the [D]director receives the following:

(a) a current and complete application for registration of radiation machines submitted electronically through the division's website or using form DWMRC-10[for registration of radiation machines]; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the [D]director through receipts for the remittance of the registration fee.

KEY: x-rays, inspections

Date of Last Change: 2023[December 13, 2021]

Notice of Continuation: April 8, 2021

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:	R392-100	Filing ID:	55242
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Agency Information

1. Department:	Health and Human Services	
Agency:	Disease Control and Prevention, Environmental Services	
Room number:	Second Floor	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142102	
City, state and zip:	Salt Lake City, UT 84114-2102	
Contact persons:		
Name:	Phone:	Email:
Karl Hartman	801-538-6191	khartman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R392-100. Food Service Sanitation

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the Utah Rulewriting Manual. As required, the amendments to Rule R392-100 provide technical and conforming changes in accordance with the Utah Rulewriting Manual.

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 R392-100 provide technical and conforming changes throughout this rule and remove superfluous and repetitive language. Other sections have

been changed to improve clarity and ease of use, and to reflect current food sanitation and safety practices.

In Section R392-100-2:

- 1) added definitions for: agritourism food establishment, Department, Local health department, Microenterprise home kitchen; and
- 2) amended definition for: food truck, and Ice cream truck.

The Department of Health and Human Services (Department) made numerous 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 Utah Rulewriting Manual. The Department made substantive amendments are described below within each section description.

Section R392-100-3 was amended to exempt certain food service establishments from this rule and to direct the reader to the applicable rule for each exempted food service establishment type.

In Section R392-100-4:

- 1) this section was amended to allow toilet rooms to be constructed without exterior doors under certain conditions; and
- 2) this section was amended to allow dogs in the outdoor patio areas of a food establishment under certain conditions.

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 substantive changes do not result in a change in current practice or procedures at the Department of Health and Human Services.

B) Local governments:

No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the local health departments.

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

Allowing toilet rooms to be constructed without exterior doors under certain conditions will result in an inestimable fiscal benefit to certain newly constructed food establishments. There are no other fiscal impact because the amendments are reflective of current food safety and sanitation practices.

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

Allowing toilet rooms to be constructed without exterior doors under certain conditions will result in an inestimable fiscal benefit to certain newly constructed food establishments. There are no other fiscal impact because the amendments are reflective of current food safety and sanitation practices.

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 are no fiscal impact to persons because the amendments are reflective of current food safety and sanitation practices.

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

The proposed amendments will not result in additional compliance costs because the proposed substantive amendments are less restrictive than the currently enacted rule.

G) 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
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	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

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. 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 26-15-2	Section 26-1-30	Section 26-1-5
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Public Notice Information

8. 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:	03/31/2023
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9. This rule change MAY become effective on:

04/07/2023

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/28/2023
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R392. Health and Human Services, Disease Control and Prevention, Environmental Services.

R392-100. Food Service Sanitation.

[R392-100 1. Authority and Purpose.

- (1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.
- (2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100 2. Definitions:

- (1) "Food Cart" means a cart:
 - (a) that is not motorized; and
 - (b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.

- (2)(a) "Food Truck" means a fully enclosed food service establishment:
 - (i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and
 - (ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.
- (b) "Food Truck" does not include a food cart or an ice cream truck.
- (3) "Ice Cream Truck" means a fully enclosed food service establishment:
 - (a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;
 - (b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;
 - (c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and
 - (d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.
- (4) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).
- (5) "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).
- (6) "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).

R392-100 3. General Requirements.

- (1) The following food service establishments are exempt from the requirements of this rule:
 - (a) Food trucks as defined in this rule and in Rule R392-102;
 - (b) Certified or licensed child care facilities, including residences, that provide care for 16 or fewer children; and
 - (c) Residential treatment programs, residential support programs, and recovery residences as defined in this rule and in Rule R392-110.
- (2) Food trucks shall abide by the requirements of Rule R392-102.
- (3) Certified or licensed childcare facilities, including residences, that provide care for 16 or fewer children; residential treatment programs; residential support programs; and recovery residences shall abide by the requirements of Rule R392-110.

R392-100 4. Incorporation by Reference.

- (1) The Department incorporates by reference the following:
 - (a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.
 - (b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"); Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.
- (2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:
 - (a) Subsection 5-203.15(B);
 - (b) Subsections 5-402.11(B), (C) and (D);
 - (c) Subsections 8-302.14(D) and (E);
 - (d) Subsection 8-304.11(K);
 - (e) Annex 1, Section 8-905.40;
 - (f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);