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 June 10, 2021 at 1:30 p.m. at the Utah Department of Environmental Quality, (Multi-Agency State Office Building) Conference Room #1015, 195 North 1950 West, SLC.

(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#

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 May 13, 2021 Board Meeting..... Tab 1
(**Board Action Item**)

V. Underground Storage Tanks Update ..... Tab 2

VI. Approval of proposed changes to the following Underground Storage Tank Rules for initial publication and 30-day public comment period (**Board Action Item**)..... Tab 3

- 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.
- R311-209, Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.
- R311-212, Administration of the Petroleum Storage Tank Loan Program.

(Over)

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VII. Hazardous Waste Section (Information Item) ..... Tab 4

A. Proposed Stipulation and Consent Order between the Board and Clean Harbors, Aragonite (Information Item).

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

A. Mammography Imaging Medical Physicists Annual Renewal Requirements (Information Item).

IX. Director's Report.

X. Other Business.

A. Miscellaneous Information Items.
B. Scheduling of next Board meeting (July 8, 2021).

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 Electronic/Telephonic Board Meeting Minutes
May 13, 2021
1:30 p.m.

No Anchor Location. All Board members participated electronically or telephonically. UDEQ employees and others from the general public also participated either electronically or telephonically.

Members Participating (Electronically/Telephonically):
Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Richard Codell, Danielle Endres, Mark Franc, Steve McIff, Nathan Rich, Kim Shelley, Vern Rogers and Shane Whitney

Board Members Excused: NONE

UDEQ Staff members participating (Electronically/Telephonically):
Tom Ball, Brent Everett, Arlene Lovato, Jalynn Knudsen, Mike Pecorelli, Elisa Smith, Otis Willoughby and David Wilson

I. Call to Order.

Chairman Mickelson called the meeting to order at 1:30 pm; roll call of Board members was conducted (see above).

Chairman Mickelson announced this meeting is being held in accordance with House Bill 5002, effective July 1, 2020, which amended the Open and Public Meetings Act to address electronic meetings held without an anchor location. The Chair of the Waste Management and Radiation Control Board has determined that the presence of the COVID 19 virus in the community presents a substantial risk to the health and safety of those who might be present at an anchor location. Therefore, this meeting is being conducted without an anchor location. A member of the public may participate/view this meeting via an electronic platform Google Meet or by Telephone call-in number by utilizing the electronic link/telephone number provided in the public notice of this meeting. (Public notice of this meeting was posted on the DWMRC website and the Utah Public Notice website). Also, a member of the public may make a comment on any Agenda item during this Board meeting during the time allotted for "Public Comments on Agenda Items" listed on all Agendas.

II. Public Comments on Agenda Items. – None.

III. Declarations of Conflict of Interest.

Vern Rogers declared a conflict of interest and will abstain from voting on Agenda Item IX. A. (Energy*Solutions*' request for a one-time site-specific treatment variance to receive lithium and lithium-ion batteries for treatment and disposal.)

IV. Approval of Meeting Minutes for the April 8, 2021 Board Meeting (Board Action Item).

It was moved by Danielle Endres and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the April 8, 2021 Board meeting minutes.

V. Underground 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 March 2021 was $19,725,787.00. The preliminary estimate of the cash balance of the PST Trust Fund for the end of April 2021 is $20,162,842.00. The DERR continues to watch the balance of the

PST Trust Fund closely to ensure sufficient cash is available to provide coverage of covered releases.

VI. Underground Storage Tank Rules.

A. Proposed changes to the following Underground Storage Tank Rules (Information Item Only).

- 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
- R311-209, Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation
- R311-212, Administration of the Petroleum Storage Tank Loan Program

Director Everett introduced David Wilson, the Underground Storage Tank (UST) Rules Coordinator, who provided an overview of the proposed changes to the above UST Rules. Director Everett also introduced Mike Pecorelli, the PST Section Manager, who provided a presentation regarding the proposed rule changes to the PST Trust Fund program. This is an informational item and these proposed rule changes will be presented for Board approval at the June 2021 meeting.

Mr. Wilson explained that the DERR was tasked by the legislature to review the Environmental Assurance Program reimbursement process. During an internal audit of the PST claim fund reimbursement submissions in 2018, it was found that tasks being submitted by claimants had a high variability in hours, cost, and the skill level of personnel needed to complete the task. Some task variability ranges were as high as four times that of similar submissions. The audit lead to the development of a cost guideline which establishes a framework for a standardized, consistent approach to work done for PST Trust Fund sites. Additional rule changes include that PST Trust Fund participants are no longer required to periodically test the interstice of USTs or piping to receive credit as double walled for purposes of the Environmental Assurance fee rebate model. Other proposed changes simplify the rules and remove unnecessary wording, including things that are redundant or no longer applicable.

These proposed rule changes were presented at the UST Advisory Task Force, a stakeholder group, meeting on April 13, 2021. A summary of the proposed changes and a link to the text of the changes can be found on the UST Branch website. Board members were provided a summary of the proposed changes and a link to the text of the changes in their May 13, 2021 Board packet.

Dennis Riding asked if these are the changes that had been worked on with consultants and other stakeholders over past years. Mr. Wilson confirmed that is the case. Mr. Riding asked if these changes are due to the most recent legislation involving aboveground storage tanks (ASTs). Director Everett informed the Board that no AST rule changes are included and that AST rule changes will be brought before the Board as a separate item.

Mr. Pecorelli gave a presentation on the major changes that have occurred in the creation of the *Cost Guideline for Utah Underground Storage Tank Sites* (Cost Guideline) and a new *Sampler's Guide* that has been updated. The Cost Guideline is designed to provide a mechanism for consistent

preparation and efficient review of cost proposals. It is based on data from previous work and cost guidelines created by other states. The DERR has also incorporated feedback received from consultants and DERR staff. The Cost Guideline also combined job classifications and removed overlap and ambiguity. Reimbursements will be based on the task performed and not the job title of the person performing the task. The costs for purchasing or renting equipment have been updated and maximum laboratory rates are being established. Quote and bid requirements have also been established. Consultants can work with the DERR on adjustments for sites that are not typical. The *Sampler's Guide* has been updated to include air sampling and updated information on sampling best practices.

Mr. Riding asked what the anticipated savings to the PST Trust Fund are with the use of the new Cost Guideline. Director Everett said that we have not calculated a specific cost saving relative to the standardized costs. There will be efficiencies brought to both consultants and the DERR by using a standardized cost system both in submission of a claim and review of the claim. Right now, annually, each consultant must provide a statement of qualification that is then reviewed by the DERR. While it is unknown if there will be a cost savings to the PST Fund directly, there will be time savings and efficiencies that are created.

Mr. Riding asked if it is expected that some consultants will stop work with the PST Trust Fund. Mr. Pecorelli stated that it is possible, but the DERR has worked closely with consultants and kept them involved in the process of assembling the cost guideline.

VII. Administrative Rules.

A. Approval to proceed with formal rulemaking and a public comment period for proposed rule changes to R313-19-100 of the Radiation Control Rules to incorporate regulatory corrections requested by the Nuclear Regulatory Commission (NRC) to maintain the compatibility of Utah radiation control rules with the federal regulations (Board Action Item).

Tom Ball, Planning and Technical Support Manager of the Division of Waste Management and Radiation Control, reviewed the request for the Board's approval to initiate formal rulemaking and public comment on the proposed rule changes to R313-19-100 of the Radiation Control Rules to incorporate changes requested by the Nuclear Regulatory Commission (NRC) to maintain the compatibility of Utah radiation control rules with the federal regulations.

An Executive Summary and the proposed changes to R313-19-100 (highlighted in the document in yellow) were included in the May 13, 2021 Board packet.

The Division of Waste Management and Radiation Control received a comment from the Nuclear Regulatory Commission (NRC) in March of 2021 indicating that they had discovered an incompatibility in our rules. The purpose of this amendment is to correct that incompatibility. Section R313-19-100 incorporates by reference 10 CFR 71.97. This federal regulation requires certain transportation notifications to be submitted to state and federal agencies. Subsections R313-19-100(4)(a)(ii) and (iii) substitute the Director of the Division of Waste Management and Radiation Control for the Directors of two different NRC offices. The NRC commented that the notifications need to be sent to the NRC as well as the state agency and indicated that to remain compatible with the federal program, Utah needs to delete Subsections R313-19-100(4)(a)(ii) and (iii).

Deleting these two subsections will not impact the Utah radiation control program because the federal regulations already require the notifications to be submitted to the states as well as the federal agencies.

In addition to the proposed changes detailed above, the Division, at the request of the Governor's Office,

is correcting typographical and formatting errors found in the rules.

The Board is authorized under Subsection 19-3-103.1(1) to make rules that are necessary to implement the Radiation Control Act. The rule changes also meet existing DEQ and state rulemaking procedures and are necessary for the state to maintain compatibility with federal regulations for radioactive materials.

Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the *Utah State Bulletin* and conducting a 30-day public comment period.

The Director recommends the Board authorize initiating the formal rulemaking process by filing the proposed rule changes with the Office of Administrative Rules for publication in the *Utah State Bulletin* and commence a 30-day public comment period. With the Board's approval and following a required review by the Governor's Office, it is anticipated that the proposed rule changes will be published in the June 1, 2021 issue of the *Utah State Bulletin* with a public comment period beginning on June 1, 2021 and ending on July 1, 2021.

Nathan Rich asked if the rule changes requested by the Governor's Office have been completed? Mr. Ball explained that a few years ago, the Legislature implemented as part of the rulemaking process, the Governor's Office review of all proposed rule changes. Once the Board approves the proposed rules to proceed with the formal rulemaking process, the Office of Administrative Rules will conduct their review and send the proposed rule changes to the Governor's Office for review, which includes reviewing legality concerns and any requested changes will be made prior to the start of the public comment period.

It was moved by Vern Rogers and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve to proceed with formal rulemaking and a 30-day public comment period on proposed rule changes to R313-19-100 of the Radiation Control Rules to incorporate regulatory corrections requested by the Nuclear Regulatory Commission (NRC) to maintain the compatibility of Utah radiation control rules with the federal regulations.

VIII. X-Ray Program.

A. Approval of Mammography Imaging Medical Physicists (MIMPs) in accordance with UCA 19-6-104(2)(b) (Board Action Item).

Tom Ball reviewed the request for the Board's approval of qualified Mammography Imaging Medical Physicists. Mr. Ball informed the Board that individuals referred to as Mammography Imaging Medical Physicists (MIMPs) 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. In April 2021, 19 individuals filed applications to be recertified as a MIMP. Two new applications were also received.

Division staff have reviewed the applicant's qualifications and all 21 applicants have met the requirements detailed in R313-28-140. An Executive Summary and a list of the 21 applicants were included in the May 13, 2021 Board packet.

In accordance with Subsection 19-6-104(2)(b) 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.

The Interim Director of the Division of Waste Management and Radiation Control recommends the Board issue a certificate of approval effective from June 1, 2021 to May 31, 2022 for the 21 applicants reviewed and presented to the Board.

Mr. Ball clarified that some of these applicants may work for facilities that conduct mammography examinations, however most applicants survey mammography equipment and evaluate or oversee quality assurance practices at mammography facilities in Utah.

Dennis Riding asked why MIMPs are required to renew their certifications annually instead of less frequently like every two years. Mr. Ball was unclear on the intent of the statues regarding the annual renewal requirements and stated he will research the matter and provide an answer at the next meeting.

It was moved by Steve McIff and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve the 21 applicants for Mammography Imaging Medical Physicists (MIMPs) in accordance with UCA 19-6-104(2)(b), effective June 1, 2021 to May 31, 2022.

IX. Low-Level Radioactive Waste Section.

A. Energy*Solutions*' request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. Energy*Solutions* seeks authorization to receive lithium and lithium-ion batteries for treatment and disposal (Board Action Item).

Otis Willoughby, Low-Level Radioactive Waste Section Manager, Division of Waste Management and Radiation Control, reviewed Energy*Solutions,* LLC's, March 17, 2021 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. Energy*Solutions* seeks authorization to receive lithium and lithium-ion batteries for treatment and disposal. This matter was brought before the Board as an information item in their April 8, 2021 meeting.

Energy*Solutions'* request for a site-specific treatment variance for the macroencapsulation of lithium and lithium-ion batteries and supporting documentation were included in the April 8, 2021 Board packet.

The Mixed Waste Facility proposes to receive lithium and lithium-ion batteries for treatment and disposal at the 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 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 Environmental Protection Agency (EPA) has ruled that intact batteries are containers and not considered debris. Furthermore, the definition of macroencapsulation in R315-268-42 states that "[M]acroencapsulation 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 reagents 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.

Energy*Solutions* proposes to manage this waste by directly macroencapsulating the intact batteries as if they were debris. Macroencapsulation is a permitted treatment technology that isolates hazardous

waste from the environment, eliminating the potential for harmful reactions from exposure to the environment. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the Energy*Solutions* Mixed Waste Facility.

A notice for public comment was published in the Salt Lake Tribune on April 4, 2021, the Deseret News on April 2, 2021, and the Tooele County Transcript Bulletin on April 1, 2021. The 30-day public comment period began April 5, 2021 and ended May 4, 2021. No comments were received.

Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268-44 of the Utah Administrative Code.

The Director recommends approval of this variance request. The Director's recommendation is based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance and will be as safe to human health and the environment as the required method.

Mr. Willoughby clarified that very few facilities in the United States deal with this type of waste that have a radioactive component. In a normal circumstance, recycling/reuse of this material would be preferred. However, because of the radioactive component it cannot be recycled or reused. That is why the US EPA recommends it be managed through a variance request.

It was moved by Nathan Rich and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve Energy*Solutions*' request for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules to receive lithium and lithium-ion batteries for treatment and disposal. Vern Rogers abstained from voting.

X. Other Business.

A. Miscellaneous Information Items.

Jalynn Knudsen, Interim Director of the Division of Waste Management and Radiation Control introduced Doug Hansen. Mr. Hansen has been appointed as the Director of the Division of Waste Management and Radiation Control and will begin on May 17, 2021. Mr. Hansen is a licensed Professional Engineer in the state of Utah and holds a degree in Chemical and Fuels Engineering from the University of Utah.

Mr. Hansen commented that he has had some previous interaction with the Board as he has worked for the past 25 years in the Underground Storage Tank Program within the Division of Environmental Response and Remediation. Mr. Hansen acknowledged this great opportunity and stated he is excited and eager to work with Board members and other stakeholders as well as his new staff within the Division of Waste Management and Radiation Control.

Kim Shelley thanked Jalynn Knudsen for all her efforts in serving as the Interim Director for the Division. Chairman Mickelson thanked Ms. Knudsen as well.

B. Scheduling of next Board meeting.

The next meeting is scheduled for June 10, 2021.

XI. Adjourn.

The meeting adjourned at 2:10 p.m.

UST STATISTICAL SUMMARY

May 1, 2020 -- April 30, 2021

PROGRAM

	May	June	July	August	September	October	November	December	January	February	March	April	(+/-) OR Total
Regulated Tanks	4,130	4,123	4,128	4,128	4,135	4,130	4,127	4,130	4,144	4,144	4,145	4,136	**6**
Tanks with Certificate of Compliance	4,006	4,009	4,033	4,029	4,027	4,027	4,039	4,044	4,051	4,051	4,053	4,058	**52**
Tanks without COC	124	114	95	99	108	103	88	86	93	93	92	78	**(46)**
Cumulative Facilitlies with Registered A Operators	1,289	1,289	1,255	1,250	1,084	1,104	1,108	1,111	1,252	1,252	1,256	1,251	**94.77%**
Cumulative Facilitlies with Registered B Operators	1,290	1,291	1,292	1,287	1,142	1,147	1,150	1,147	1,285	1,285	1,292	1,253	**94.92%**
New LUST Sites	6	4	3	11	5	8	8	8	5	5	10	5	**78**
Closed LUST Sites	3	4	2	6	3	7	2	6	4	4	16	3	**60**
Cumulative Closed LUST Sites	5291	5292	5295	5301	5302	5310	5315	5323	5329	5329	5350	5352	**61**

FINANCIAL

	May	June	July	August	September	October	November	December	January	February	March	April	(+/-)
Tanks on PST Fund	2,637	2,642	2,662	2,661	2,657	2,654	2,666	2,667	2,666	2,666	2,666	2,663	**26**
PST Claims (Cumulative)	681	684	685	685	687	688	688	688	688	688	689	690	**9**
Equity Balance	-$9,022,705	-$8,712,595	-$7,717,022	-$7,373,152	-$7,311,417	-$10,201,999	-$9,462,843	-$9,547,189	-$8,950,746	$8,633,383	-$8,709,493	-$8,272,438	**$750,267**
Cash Balance	$17,095,575	$17,405,685	$18,401,258	$18,745,128	$18,806,863	$18,233,281	$18,972,437	$18,888,091	$19,484,534	$19,801,897	$19,725,787	$20,162,842	**$3,067,267**
Loans	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Cumulative Loans	121	121	121	121	121	121	121	121	121	121	121	121	**0**
Cumulative Amount	$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	**$0**
Defaults/Amount	1	2	2	2	2	2	2	2	2	2	2	2	**1**

	May	June	July	August	September	October	November	December	January	February	March	April	TOTAL
Speed Memos	32	50	7	38	95	72	73	42	48	48	75	42	**622**
Compliance Letters	7	5	15	18	32	30	9	14	15	15	18	13	**191**
Notice of Intent to Revoke	0	0	0	0	0	0	0	0	0	0	0	1	**1**
Orders	0	2	3	2	1	2	1	0	0	0	1	0	**12**

Approval of proposed changes to R311, Underground 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 Utah Underground Storage Tank (UST) rules. These changes are presented as an action item requesting Board approval to proceed with initial publication and 30 day public comment period.

Background:

The Board and the Director of the DERR are tasked with making rules and administering the UST program. Several years ago, as legislation regarding the PST Fund was under consideration by the legislature, the Division received direction from the Legislature to review the Environmental Assurance Program reimbursement process. In 2018, the Division conducted an internal audit of several PST Fund claim reimbursement submissions. One major finding was that similar common tasks were being submitted for reimbursement from the Petroleum Storage Tank (PST) Trust Fund with high variability in hours, costs, and the level of personnel completing the tasks. Some task's variability ranged as high as four times that of other similar submissions. This audit led to the development of the "Cost Guidelines for Utah Underground Storage Tank Sites". This document establishes the framework for a standardized and consistent approach for work done by State Contractors and for PST Trust Fund reimbursements. In addition, PST Fund participants are no longer required to periodically test the interstice of tanks or piping to receive credit as double-walled for purposes of the environmental assurance fee rebate model. Other changes are proposed to simplify the state rules and remove wording that is redundant or no longer applicable. The proposed changes were presented to the UST Advisory Task Force on April 13, 2021.

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.
R311-209, Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.
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 <u>underlined</u>, and wording to be removed is ~~struck out.~~

Summary of the Proposed Changes:

R311-200, Underground Storage Tanks: Definitions.

- R311-200-1(b). Remove definitions that are no longer needed, due to changes in the federal UST regulations or changes in the state UST rules.
- R311-200-1(b)(60). Modify the definition of UST Testing to include any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.

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

- R311-201-2. Reword requirement for certification, for clarity.
- R311-201-2(a). Specify releases from hazardous substance USTs do not require a Certified UST Consultant.
- R311-201-2(b)(1). Add a limited certification restricting the type of UST inspections the applicant can perform may be issued by the director.
- R311-201-2(d). Change the name "groundwater and soil certification" to "certified sampler" to reflect the sampling of other media as well as groundwater and soil and change the words "groundwater and soil" to "environmental media". Discussed in definitions 200-1.
- R311-201-3 and 201-4. Switch section position in rule for section on application for certification and section on eligibility for certification for process clarification.
- R311-201-6(3)(A) Allows the director to audit records which support eligibility for certification, or performance of work for which certification is granted.
- R311-201-12(k). For operator training and registration, incorporate by reference the updated document "UST and LUST Performance Definitions as of October 2018" for documenting compliance.

R311-203, Underground Storage Tanks: Technical Standards.

- R311-203-3 (e)(1) Clarification that the Installation Permit fee shall be increased based on additional number of tanks being installed.
- R311-203-4(f). Update assessment of higher registration fee based on the EPA Technical Compliance Rate.
- R-311-203-5(g) Certified individuals who test overfill, automatic tank gauges and line leak detectors must use the forms found in PEI RP1200 appendices or other forms approved by the director. Each of the rule's references reporting forms to be used for the various tests. Additionally, allows for an alternative form approved by the director.
- R-311-203-8(a)(1) Changed responsible person to trained operator. Clarifies that it is the trained operator who is the responsible person on site.

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

- R311-204-3(a). Reword requirement for tank labeling for disposal.
- R311-204-2(h). Changed notification of closure activities from 72 hours to 3 business days. Clarification of what is meant by 72 hrs. Just clarifies existing language to specify that 72 hours means 3 business days.
- R311-204-3(a)(3). Changed "contained petroleum" to "substance contained" because it may have contained a non-petroleum product that would be regulated by the UST program,

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

- R311-205-2. Update document for sampling environmental media incorporated by reference. "Utah Storage Tank Program Sampling Guide, dated MONTH, YEAR "

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

- R311-206-9(d). Add a requirement that for any facility that participates in the Environmental Assurance Program and is sold to a company with facilities that do not participate in the Environmental Assurance Program, the date of termination of coverage is the closing date for the real estate transaction. The purchaser shall provide documentation of the closing date to the director within 30 days of closing.
- R311-206-10(b)(1). Update compliance status determination using the EPA "UST and LUST Performance Definitions as of October 2018".
- R311-206-11(c)(2)(C). Remove secondary containment interstitial space testing requirement for tanks for purpose of risk calculation.
- R311-206-11(d)(2)(B). Remove secondary containment interstitial space testing requirement for piping for purpose of risk calculation.
- R311-206-11(e)(2). Remove secondary containment interstitial space testing requirement for piping containment sumps and under-dispenser containment for purpose of risk calculation.

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

- R311-207-4(e)(1)(C). Remove yearly approval of competitive bid schedule for frequently used services.
- R311-207-4(h). Remove pay for performance reimbursement to claimants.
- R311-207-5(b). Replace Time and Material Reimbursement Standards document incorporated by reference with Cost Guidelines for Underground Storage Tank Sites dated February 25, 2020.
- R311-207-7. Reword consultant personnel classifications, requirements, rates, tasks, and responsibilities, for clarity.
- R311-207-7(a). Replace Consultant Personnel Qualifications and Task Descriptions document incorporated by reference with the Cost Guidelines document.
- R311-207-7(b) through (i). Remove consultant yearly filed maximum allowable reimbursement rates and fee schedules. Replace with materials, equipment, and services will be reimbursed in accordance with the Cost Guidelines.
- R311-207-9(a)(2). Remove requirement for approved PST Trust Fund labor rates and refer to Cost Guidelines.

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

- R311-212—2(d). Delete "Petroleum Storage Tank Trust" and refer to it as just "Fund" because Fund is defined in R311-200-1(b)(36) as Petroleum Storage Tank Trust
- R311-212-3(d)(2). Clarifying that the replacement refers to Installing and replacing "petroleum" USTs. Change made so that the rule matches the statute.

The tentative adoption schedule for the proposed rule changes is:

Request for comments from UST Stakeholders	April and May 2021
Request for Board approval for publication and public comment	June 10, 2021
Publication in the Utah State Bulletin	July 1, 2021
Public comment period	July 1 – July 31, 2021
Public hearing (date tentative)	July 15, 2021
Board approval for final adoption	August 12, 2021
Final effective date of new rules	October 29, 2021

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R311-200**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Definitions.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Several definitions in the rule are no longer necessary, due to changes in the federal underground storage tank (UST) regulations or the Utah UST rules, or are redundant, because they are now part of the federal UST regulations.

Added definition “certified sampler” to reflect the sampling of other media as well as groundwater and soil.

Added definition “Claimant” to clarify who is eligible to make reimbursement claims against the Petroleum Storage Tank Trust Fund.

Added definition “Cost Guidelines” to simplify reference to the “Cost Guidelines for Utah Underground Storage Tank Sites document, dated June 3, 2021”

Moved definition “Related parties” from R311-207-4 to a more relevant location, Underground Storage Tanks: Definitions.

UST testing is modified to include exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.

4. Summary of the new rule or change:

R311-200-1(2). Remove definitions that are no longer needed, due to changes in the federal UST regulations or changes in the state UST rules.

R311-200-1(2)(f). Added definition “Certified sampler”.

R311-200-1(2)(i). Added definition “Claimant”.

R311-200-1(2)(m). Added definition “Cost Guidelines”.

R311-200-1(2)(mm). Added definition “Related parties”.

R311-200-1(2)(hhh)(D). Modify the definition of UST Testing to include any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.

All other changes are updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not alter the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

We do not anticipate any fiscal impact to the state government revenues or expenditures from these definitions. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

B) Local governments:

We do not anticipate any fiscal impact to the local governments revenues or expenditures from these definitions. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

We do not anticipate any fiscal impact to the small business's revenues or expenditures from these definitions. 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)**:**

We do not anticipate any fiscal impact to the non-small business's revenues or expenditures from these definitions. 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***)**:**

We do not anticipate any fiscal impact on other individual's revenues or expenditures from these definitions. Any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

F) Compliance costs for affected persons:

Any cost or benefits to affected persons relating to the defined terms in this rule will be addressed in the relevant 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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
19-6-105		
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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-200. Underground Storage Tanks: Definitions.
R311-200-1. Definitions.

(1) [~~Refer to Section 19-6-402 for definitions not found in this rule.~~] Terms used in this rule are defined in Section 19-6-402.

(2) In addition, for purposes of [~~underground storage tank~~] this rule[~~s~~]:

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

(c) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the [~~underground storage tank~~] UST system.

[~~(d) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.~~]

([~~e~~]d) "Certificate" means a document that evidences certification.

([~~f~~]e) "Certification" means approval by the [~~Director~~] director or the Board to engage in the activity applied for by the individual.

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

(g) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2([~~d~~]5).

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

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

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

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

([~~k~~]l) "Consultant" is a person who is a certified [~~underground storage tank~~]UST consultant according to Subsection 19-6-402([~~6~~]7) and Section R-311-201-2.

(m) "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 Fund.

([~~l~~]n) "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.

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

([~~n~~]p) "Department" means the Utah Department of Environmental Quality.

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

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

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

([~~r~~]t) "Expeditiously 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~~] director.

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

([~~t~~]v) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of an [~~underground storage tank~~]UST.

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

[~~(v) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.~~]

([~~w~~]x) "Injury or [~~Damages~~]damages from a [~~Release~~]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([~~a~~]1).

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

([~~y~~]z) "Lapse" in reference to the [~~Certificate~~]certificate of [~~Compliance~~]compliance and coverage under the [~~Petroleum Storage Tank Trust Fund~~]Environmental Assurance Program, means to terminate automatically.

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

([~~aa~~]bb) "No Further Action determination" means that the [~~Director~~] 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 [~~an unacceptable risk~~]a threat to public health or the environment based upon Board established criteria in Title R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

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

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

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

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

(ff) "Permanently closed" means [~~underground storage tank~~]UST 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 [~~Section~~]Subsection 19-6-402([~~20~~]21).

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

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

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

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

(ll) "Registration fee" means [~~underground storage tank~~]UST registration fee.

[~~(mm) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based~~

~~substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.~~]

(mm) "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.

(nn) "Secondary [~~Containment~~]containment", for the purposes of 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 [~~shall~~]must meet the requirements of 40 CFR 280.43(g).

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

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

(rr) "Site plat" for the purpose of notification[~~,~~] or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but [~~shall~~]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 UST[~~(s)~~]; extent of any excavation[~~(s)~~]; [~~and known contamination and~~] location and volume of any stockpiled soil; locations, [~~and~~] depths, and analytical results of all environmental media samples collected; locations and total depths of borings or permanent [~~monitoring~~] wells, [~~soil borings~~] or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(ss) "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~~]fire and explosion hazards have been abated[~~.~~];

(ii) [~~Free~~]free flow of the product out of the tank has been stopped.

(iii) [~~Free~~]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~~]director, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6)[~~.~~];

(iv) [~~Alternative~~]alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release[~~.~~]; and

(v) [~~A~~]a soil or groundwater management plan or both have been submitted for approval by the [~~Director~~]director.

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

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

(vv) "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.

(ww) "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 R311-201-12([~~e~~]7).

(xx) "Under-[~~Dispenser~~]dispenser [Containment]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.

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

(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.

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

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

(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.

(ccc) "UST installation permit fee" means the fee established by [~~Section~~]Subsection 19-6-411(2)(a)(ii).

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

(eee) "UST removal" means the removal [~~of an underground storage tank system, including permanently closing and~~]or permanent closure of an underground storage tank by taking out of service all or part of an underground storage tank system.

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

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

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

(A) a testing method which can detect leaks in an underground storage tank system[~~, or~~];

(B) testing for compliance with corrosion protection requirements[~~, or~~];

(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~~]testing methods must 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) [~~R311-206-11(c)(2)(C)~~]interstitial testing for tank and piping secondary containment [~~testing under R311-206-11~~].

KEY: petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: January 1, 2017
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R311-201**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Certification Programs and UST Operator Training.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Clarifies that services provided by a certified UST consultant applies to petroleum tanks and not hazardous substance tanks.
Provides a limited form of UST inspector certification for individuals who only need to do certain types of UST inspections.
Makes the change from groundwater and soil certification to certified sampler and groundwater and soil to environmental media to reflect the sampling of other media such as vapors.
Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

Incorporated by reference "UST and LUST Performance Definitions as of October 2018" to replace the older "EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix" which is removed from incorporated by reference in R311-206-11(b)(1).

4. Summary of the new rule or change:

R311-201-2. Reworded some requirements for certification, for clarity.

R311-201-2(1). Specify releases from hazardous substance USTs do not require a Certified UST Consultant.

R311-201-2(2). Adding limits to the types of UST inspections that an applicant can perform. This limited certification may be issued by the director.

R311-201-2(4). Change the name "groundwater and soil certification" to "certified sampler" to reflect the sampling of other media and changed the words "groundwater and soil" to "environmental media". Discussed in definitions R311-200-1.

R311-201-3 and 201-4. Reordered requirements for "Application for Certification" and "Eligibility for Certification" for process clarity.

R311-201-6(2). Allows the director to audit records which support eligibility for certification, or performance of work for which certification is granted.

R311-201-12(10). For operator training and registration, incorporate by reference the updated document "UST and LUST Performance Definitions as of October 2018" for documenting compliance.

Updating rule references.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

R311-201-2. This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because this is a clarification.

R311-201-2(1). This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because this is a clarification.

R311-201-2(2). DEQ UST Inspectors – Benefit Direct Fiscal approximately $200 - $400 a year.
Easier for some State inspectors to get trained. Eliminates the cost for taking training course which will save approximately $200 per person. Only 1-2 state UST (DEQ) inspectors a year will take advantage of this.

R311-201-2(4). This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because

R311-201-3 and 201-4. This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because the reordering of sections is only for process clarity.

R311-201-6(2). DEQ Auditor - Fiscal Cost to Division.
DEQ Auditor's time charged for performing audits. Ensure accuracy and consistency of charges submitted and reimbursed.

Fiscal Cost Inestimable.
Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-201-12(10). Cost Inestimable Fiscal. If a Class A and/or Class B operator requires re-training the cost per person would be $50 registration fee & approximately $150 to re-take course. Over the last 4 years no one employed by state government needed to retrain. It is not possible to predict how these new compliance standards will affect the number of individuals needing to be retrained in the future.

B) Local governments:

R311-201-2. This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because this is a clarification.

R311-201-2(1). This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because this is a clarification.

R311-201-2(2). LHD UST Inspectors – Benefit Direct Fiscal approximately $200 - $400 a year.
Easier for some State inspectors to get trained. Eliminates the cost for taking training course which will save approximately $200 per person. Only 1-2 local health department UST (DEQ) inspectors a year will take advantage of this.

R311-201-2(4). This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because it only reflects the common practice of sampling other media such as vapors as well as groundwater and soil.

R311-201-3 and 201-4. This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because the reordering of sections is only for process clarity.

R311-201-6(2). Fiscal Cost Inestimable.
Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-201-12(10). Cost Inestimable Fiscal. If a Class A and/or Class B operator requires re-training the cost per person would be $50 registration fee & approximately $150 to re-take course. Over the last 4 years no one employed by local governments needed to retrain. It is not possible to predict how these new compliance standards will affect the number of individuals needing to be retrained in the future.

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

R311-201-2. This rule change is not expected to have any fiscal impacts on small business's revenues or expenditures because this is a clarification.

R311-201-2(1). This rule change is not expected to have any fiscal impacts on small business's revenues or expenditures because this is a clarification.

R311-201-2(2). This rule change is not expected to have any fiscal impacts on small business's revenues or expenditures because only employees of DEQ and Local Health Departments can apply to be UST inspectors.

R311-201-2(4). This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because

R311-201-3 and 201-4. This rule change is not expected to have any fiscal impacts on small business's revenues or expenditures because the reordering of sections is only for process clarity.

R311-201-6(2). Fiscal Cost Inestimable.
Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-201-12(10). Cost Inestimable Fiscal. If a Class A and/or Class B operator requires re-training the cost per person would be $50 registration fee & approximately $150 to re-take course. Over the last 4 years only 3 people employed by small businesses needed to retrain. It is not possible to predict how these new compliance standards will affect the number of individuals needing to be retrained in the future.

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

R311-201-2. This rule change is not expected to have any fiscal impacts on non-small business's revenues or expenditures because this is a clarification.

R311-201-2(1). This rule change is not expected to have any fiscal impacts on non-small business's revenues or expenditures because this is a clarification.

R311-201-2(2). This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because only employees of DEQ and Local Health Departments can apply to be UST inspectors.

R311-201-2(4). This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because

R311-201-3 and 201-4. This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because the reordering of sections is only for process clarity.

R311-201-6(2). Fiscal Cost Inestimable.
Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-201-12(10). Cost Inestimable Fiscal. If a Class A and/or Class B operator requires re-training the cost per person would be $50 registration fee & approximately $150 to re-take course. Over the last 4 years no one employed by non-small businesses needed to retrain. It is not possible to predict how these new compliance standards will affect the number of individuals needing to be retrained in the future.

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***)**:**

R311-201-2. This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because this is a clarification.

R311-201-2(1). This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because this is a clarification.

R311-201-2(2). This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because only employees of DEQ and Local Health Departments can apply to be UST inspectors.

R311-201-2(3) This rule change will not affect any other persons other than UST Owners/Operators.

R311-201-2(4). This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because

R311-201-3 and 201-4. This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because the reordering of sections is only for process clarity.

R311-201-6(2). This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because it applies to those with certifications.

R311-201-2(c) This rule change will not affect any other persons other.

R311-201-2(d). This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because

F) Compliance costs for affected persons:

R311-201-2(2). This rule will be a benefit for Certified Inspectors because it allows a limited form of UST inspector certification for individuals who only need to do certain types of UST inspections.

R311-201-6(2). Fiscal Cost Inestimable.
Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-201-12(10). Cost Inestimable Fiscal. If a Class A and/or Class B operator requires re-training the cost per person would be $50 registration fee & approximately $150 to re-take course. It is not possible to predict how these new compliance standards will affect the number of individuals needing to be retrained in the future.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, “The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis.”

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The state and local health UST Inspectors will benefit from not having to complete all the training needed to become an UST Inspector if they are only doing certain types of UST Inspections. Some Class A and/or Class B operators may incur a cost if they are unable to meet the new compliance standards, but this cost is inestimable.

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

19-1-301	19-6-403	63G-4-503
19-6-105	63G-4-102	
19-6-402	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*)**:**

	First Incorporation
Official Title of Materials Incorporated (from title page)	UST and LUST Performance Definitions as of October 2018
Publisher	US EPA
Date Issued	4/10/2018
Issue, or version	https://www.epa.gov/ust/ust-performance-measures

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.
R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. [~~Certification~~]Requirement for Certification.

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

(a) [~~No~~]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 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[~~,~~]. [~~without having certification to conduct these activities,~~]

(A) except as outlined in [~~Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and~~]Subsection R311-204-5([~~b~~]2)[~~.~~]; and

(B) except for releases from a hazardous substance UST system, as defined in 40 CFR 280.10.

(b) [~~The Certified~~]a certified UST [~~Consultant~~]consultant [~~shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall~~]must:

(i) make pertinent project management decisions [~~and be responsible for~~];

(ii) [~~ensuring~~]ensure [~~that~~] all aspects of [~~UST~~]petroleum storage tank-related work are performed in an appropriate manner[~~,~~]; and

(iii) [~~all related documentation for work performed submitted to the director shall contain the Certified UST Consultant's signature~~]sign all documentation to be submitted to the director for work performed.

(c) [~~Any~~]any UST release abatement, investigation, [~~and~~]or corrective action work performed by a person who is not certified or who is not working under the direct supervision of a [~~Certified~~]certified UST [~~Consultant~~]consultant, and is performed for compliance with Utah [~~underground storage tank release-related~~]UST rules, [~~except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b),~~]may be rejected by the [~~Director~~]director.

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

(a) the director may issue a limited certification restricting the type of UST inspections the applicant can perform.

(3) UST tester. No owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201.

(a) [~~Except~~]except as outlined in Subsections R311-201-2(c)(2) and

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

(b) [~~An~~]an individual certified under Rule R311-201 as [~~an~~]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 [~~R311-206-11(e)(2)~~]40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

(c) [~~An~~]a UST 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 [~~R311-206-11(e)(2)~~]40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

(d) [~~Certification~~]certification by the [~~Director~~]director under this [~~Rule~~]rule [~~shall apply~~]applies only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by equivalent training as determined by the [~~Director to be equivalent to the manufacturer training~~]director, for [~~these~~]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~~]the director may issue a limited certification restricting the type of UST testing the applicant can perform.

(4) [~~Groundwater and soil~~] Certified sampler. No person shall conduct [~~groundwater or soil~~]environmental media sampling for determining levels of contamination which may have occurred from regulated [~~underground storage tanks~~]USTs without having certification to conduct these activities.

(a) [~~No~~]no owner or operator shall allow any [~~groundwater or soil~~]environmental media sampling for determining levels of contamination which may have occurred from regulated [~~underground storage tanks~~]USTs to be conducted on a tank under their ownership or operation unless the person conducting the [~~groundwater or soil~~]environmental media sampling is

certified according to Rule R311-201.

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

(a) [~~No~~]no owner or operator shall allow the installation of [~~an underground storage tank~~]a UST, [~~to be conducted on a tank~~]or any component thereof, under their ownership or operation unless the person installing the [~~tank~~]UST is certified according to Rule R311-201.

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

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

(a) [~~No~~]no owner or operator shall allow the removal of [~~an underground storage tank~~]a UST, [~~to be conducted on a tank~~]or any component thereof, under their ownership or operation unless the person conducting the [~~tank~~]UST removal is certified according to Rule R311-201.

[~~**R311-201-3. Application for Certification.**~~

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

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

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

~~(2) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the [Director] director for determination of eligibility for certification. If the [Director] director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-4 and meets the standards described in Section R311-201-6, the [Director] 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. Certificates shall be subject to periodic renewal pursuant to Section R311-201-5.~~]

R311-201-[**4**]3**. Eligibility for Certification.**

(1) Certified UST [~~Consultant~~]consultant.

(a) [~~Training~~]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 application, [~~must~~] complete an approved training course or equivalent in a program approved by the [~~Director~~]director to provide training to include the following areas:

(A) state and federal statutes[~~,~~];

(B) rules and regulations[~~,~~];

(C) [~~groundwater and soil~~]environmental media sampling[~~,~~]; and

(D) [~~other applicable and related Department of Environmental Quality~~]department policies.

(b) [~~Experience~~]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 [~~underground storage tank~~]UST release abatement, investigation, and corrective action[~~,~~]; or

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

(c) [~~Education~~]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/experience as determined by the [~~Director~~]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~~]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~~]director.

(d) [~~Initial Certification Examination~~]initial certification examination. Each applicant who is not certified pursuant to Section R311-201-[~~3~~]4 must successfully pass an initial certification examination or equivalent, administered under the direction of the [~~Director~~]director.

(i) [~~The Director~~]the director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-[~~4~~]3([~~a~~]1)([~~1~~]a).

(e) [~~Renewal Certification Examination~~]renewal certification examination. Certified UST [~~Consultants~~]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~~]director.

(i) [~~The Director~~]the director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-[~~4~~]3([~~a~~]1)([~~1~~]a).

(ii) [~~The Director~~]the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) [Examination]examination for [~~Revoked~~]revoked or [~~Expired Certification~~]expired certification. Any applicant who is not a [~~Certified~~]certified UST [~~Consultant~~]consultant on the date the renewal certification examination is given[~~,~~] because the consultant's prior [~~UST Consultant~~] certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under Subsection R311-201-[~~4~~]3([~~a~~]1)([~~3~~]d).

(2) UST [~~Inspector~~]inspector.

(a) [~~Training~~]training. For initial certification, an applicant must have successfully completed [~~an underground storage tank~~]a UST

inspector training course or equivalent within the six-month period prior to application.

(i) [~~The~~]the training course [~~shall~~]must be approved by the [~~Director~~]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 rules and regulations.

(ii) [~~Renewal~~]renewal certification training will be established by the [~~Director~~]director.

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

(b) [~~Certification Examination~~]certification examination. An applicant must successfully pass a certification examination administered under the direction of the [~~Director~~]director.

(i) [~~The Director~~]the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-[~~4~~]3([~~b~~]2)([~~1~~]a), and the standards and criteria against which the applicant will be evaluated.

(ii) [~~The Director~~]the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(3) UST [~~Tester~~]tester.

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

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

(b) [~~Training~~]training.

[~~(i)~~] For initial certification, an applicant [~~shall~~]must complete [~~underground storage tank~~]UST testers training within the six-month period prior to application, in a program approved by the [~~Director~~]director, to provide training to include applicable and related areas of state and federal statutes, rules, and regulations.

(i) [~~Renewal~~]renewal certification training will be established by the [~~Director~~] director.

(A) [~~The~~]the applicant must provide documentation of training with the application.

(ii) [~~For~~]for initial certification to perform the types of testing

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

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

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

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

(c) [~~Performance Standards~~]performance standards of [~~Equipment~~]equipment. An applicant [~~shall~~]must submit documentation that demonstrates the UST testing equipment used by the applicant meets the performance standards specified in Subsection R311-200-1([~~b~~]2)([~~60~~]hhh)([~~B~~]ii).

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

(d) [~~Certification Examination~~]certification examination. An applicant must successfully pass a certification examination administered under the direction of the [~~Director~~]director.

(i) [~~The Director~~]the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-[~~4~~]3([~~c~~]3)([~~2~~]b), and the standards and criteria against which the applicant will be evaluated.

(ii) [~~The Director~~]the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(4) [~~Groundwater and soil~~]Certified sampler.

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

(i) [~~The~~]the training course [~~shall~~]must be approved by the [~~Director~~]director and shall include instruction in the following areas:

(A) chain of custody[~~,~~];

(B) decontamination[~~,~~];

(C) EPA testing methods[~~,~~];

(D) [~~groundwater and soil~~]environmental media sampling protocol[~~,~~];
(E) preservation of samples during transportation[~~,~~];
(F) coordination with Utah certified [~~labs~~]laboratories[~~,~~]; and
(G) state and federal statutes, rules, and regulations.
(ii) [~~Renewal~~]renewal certification training will be determined by the [~~Director~~]director.
(A) [~~The~~]the applicant shall provide documentation of training with the application.
(b) [~~Certification Examination~~]certification examination. An applicant must successfully pass a certification examination administered under the direction of the [~~Director~~]director.
(i) [~~The Director~~]the director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-[~~4~~]3([~~d~~]4)([~~1~~]a), and the standards and criteria against which the applicant will be evaluated.
(ii) [~~The Director~~]the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.
(5) UST [~~Installer~~]installer.
(a) [~~Financial~~]financial assurance. An applicant or the applicant's employer [~~shall~~]must have insurance, surety bonds, liquid company assets, or other appropriate kinds of financial assurance which covers [~~underground storage tank~~]UST installation and which, in combination, represents an unencumbered value of not less than the largest [~~underground storage tank~~]UST 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~~]evidence of financial assurance shall be provided with the application.
(ii) [~~An~~]an applicant who uses [~~his~~]their employer's financial assurance must also provide evidence of [~~his~~]their employer's approval of the application.
(b) [~~Training~~]training. For initial certification, an applicant must have successfully completed [~~an underground storage tank~~]a UST installer training course or equivalent within the six-month period prior to the application.
(i) [~~The~~]the training course [~~shall~~]must be approved by the [~~Director~~]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~~]the applicant must provide documentation of training with the application.
(c) [~~Experience~~]experience. Each applicant must provide with

[~~his~~]their application a sworn statement or other evidence that [~~he has~~]they have actively participated in a minimum of three [~~underground storage tank~~]UST installations.

(d) [~~Certification Examination~~]certification examination. An applicant must successfully pass a certification examination administered under the direction of the [~~Director~~]director.

(i) [~~The Director~~]the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-[4]3([~~e~~]5)([~~2~~]b), and the standards and criteria against which the applicant will be evaluated.

(ii) [~~The Director~~]the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) UST [~~Remover~~]remover.

(a) [~~Financial~~]financial assurance. An applicant or the applicant's employer [~~shall~~]must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers [~~underground storage tank~~]UST removal and which, in combination, represents an unencumbered value of not less than the largest [~~underground storage tank~~]UST 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~~]evidence of financial assurance shall be provided with the application.

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

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

(i) [~~The~~]the training course [~~shall~~]must be approved by the [~~Director~~]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~~]the applicant must provide documentation of training with the application.

(c) [~~Experience~~]experience. Each applicant must provide with [~~his~~]their application a sworn statement or other evidence that [~~he has~~]they have actively participated in a minimum of three [~~underground storage tank~~]UST removals.

(d) [~~Certification Examination~~]certification examination. An applicant must successfully pass a certification examination administered under the direction of the [~~Director~~]director.

(i) [~~The Director~~]the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-[4]3([~~f~~]6)([~~2~~]b), and the standards and criteria against which the applicant will be evaluated.

(ii) [~~The Director~~]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] 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) 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 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-[~~4~~]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~~]director determines that the applicant meets the applicable eligibility requirements of Section R311-201-[~~4~~]3 and the applicable performance standards of Section R311-201-6, the [~~Director~~]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 submitting a renewal application [~~shall~~]must successfully satisfy the training and certification examination requirements for initial certification under Section R311-201-[~~4~~]3 for the applicable certificate before receiving the renewal certification[~~,~~].

(a) except as provided in Subsection R311-201-[~~4~~]3([~~a~~]1)([~~6~~]f) for certified UST consultants.

R311-201-6. Standards of Performance.

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

(a) display the certificate upon request;

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

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

(i) [~~Certified~~]certified UST consultants and certified groundwater and soil samplers [~~shall~~]must report the discovery of any release caused by or encountered in the course of performing environmental media sampling for compliance with Utah UST rules, or report the results indicating that a release may have occurred, to the [~~Director~~]director, the local health district, and the local public safety office within [~~twenty-four~~]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) [~~shall~~] not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(2) The director may audit or commission and 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.

([~~2~~]3) Certified individuals [~~shall~~]must, in addition to meeting the performance standards in Subsection R311-201-6([~~a~~]1), [~~observe~~]comply with the following:

(a) [~~Certified~~]certified UST [~~Consultant~~]consultant. An individual who provides UST consulting services in the State of Utah must:

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

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

(iii) [~~shall~~] perform work and submit documentation in a timely manner;

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

(v) [~~shall~~] ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a [~~Certified~~]certified UST [~~Consultant;~~]consultant.

(b) UST [~~Inspector~~]inspector. An individual who performs [~~underground storage tank~~]UST inspecting for the Division of Environmental Response and Remediation shall:

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

(c) UST [~~Tester~~]tester. An individual who performs UST testing in the State of Utah must:

(i) [~~shall~~] perform all work in a manner that [~~there is no~~]does not cause a release of the contents of the tank;

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

(iii) [~~shall~~] perform work in a manner that the integrity of the [~~underground storage tank~~]UST system is maintained.

(d) UST [~~Installer~~]installer. An individual who performs [~~underground storage tank~~]UST installation or repair in the State of Utah must:

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

([~~i~~]A) [~~shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment, including~~] pre-installation tank testing[~~,~~];

(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 UST repair, shall be supervised by a certified person~~]; and

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

(e) UST [~~Remover~~]remover. An individual who performs [~~underground storage tank~~]UST removal in the State of Utah must:

(i) [~~shall~~] assure that all 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 [~~shall~~]must be supervised by a certified person; and

(ii) [~~shall~~] not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2([~~b~~]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 [~~shall~~]will be provided with a written documentation by the [~~Director~~]director specifying the reason or reasons for denial.

(a) [~~An~~]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 [~~his~~]their employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer.

(2) If the employer loses [~~his~~]their financial assurance or the applicant leaves the employer, [~~his certificate shall~~]their certification will automatically be deemed inactive and [~~he shall~~]they will no longer be certified for purposes of this [~~Rule~~]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-[~~4~~]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~~]procedures for revocation are specified in Rule R305-7.

R311-201-10. Reciprocity.

(1) If the [~~Director~~]director determines that another state's certification program is equivalent to the certification program [~~provided~~]referred to in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, [~~he~~]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-[~~3~~]4([~~c~~]3), [~~as appropriate,~~] whichever [~~is~~]occurs first.

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

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

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

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

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

([~~2~~]3) The UST owner or operator [~~shall~~]must provide documentation to the [~~Director~~]director to identify the Class A, B, and C operators for each facility.

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

([~~3~~]4) New Class A and B operators [~~shall~~]must be trained and registered within 30 days of assuming responsibility for an UST facility.

(5) New Class C operators [~~shall~~]must be trained before assuming the

responsibilities of a Class C operator.

([~~4~~]6) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12([~~d~~]6)([~~2~~]b).

(a) [~~The~~]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.

[~~(a)~~] The Class A operator [~~shall~~]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~~]director as required; and

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

(b) [~~An~~]an owner or operator may designate a 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).

([~~5~~]7) The Class B operator [~~shall~~]must implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems.

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

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

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

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

([~~d~~]iv) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12([~~e~~]7)([~~3~~]iii), if it is not reported as a suspected release according to 40 CFR 280.50;

([~~e~~]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;

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

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

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

([~~i~~]ix) ensure that Class C operators are trained and registered, and are on[~~-~~]site during operating hours.

([~~6~~]8) Any individual providing services as a third-party Class B

operator [~~shall~~]must be trained and registered in accordance with Subsection R311-201-12([~~h~~]10) and [~~shall~~]must:

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

(i) a UST [~~Tester,~~]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.

([~~7~~]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 [~~shall~~]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, [~~and/or~~] 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.

([~~8~~]10) Operator [~~Training~~]training and [~~Registration~~]registration.

(a) [~~Training~~]training and testing.

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

(ii) [~~The~~]the training course [~~shall~~]must be approved by the [~~Director~~]director, and shall include instruction in the following:

(A) notification[~~,~~];

(B) temporary and permanent closure[~~,~~];

(C) installation permitting[~~,~~];

(D) [~~underground tank~~]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 rules and regulations[~~,~~];

(N) UST financial responsibility[~~,~~]; and

(O) delivery prohibition.

(iii) [~~Applicants~~]applicants for Class A and B operator registration [~~shall~~]must successfully pass a registration examination authorized by the [~~Director~~]director.

(A) [~~The Director~~]the director shall determine the content of the examination.

(iv) [~~An~~]an individual applying for Class A or B operator

registration may be exempted from meeting the requirements of Subsections R311-201-12([~~h~~]10)([~~1~~]a)([~~A~~]i) and R311-201-12(10)(a)([~~C~~]iii) by completing the following within the six-month period prior to application:

(A) successfully passing a nationally recognized UST operator examination approved by the [~~Director,~~]director; and

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

(v) [~~The Director~~]the director shall determine the content of the examination.

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

(b) [~~Registration~~]registration application.

(i) [~~Applicants~~]applicants for Class A and B operator registration [~~shall~~]must:

(A) submit a registration application to the [~~Director,~~] director;

(B) [~~shall~~] document proper training[~~,~~]; and

(C) [~~shall~~] pay any applicable fees.

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

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

(A) each Class C operator[~~,~~];

(B) the date of training[~~,~~]; and

(C) the trainer.

(iv) [~~Identification~~]identification on the list [~~shall serve~~]serves as the operator registration for Class C operators.

([~~iii~~]v) [~~A~~]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.

([~~iv~~]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.

([~~9~~]c) [~~Renewal~~]renewal of registration.

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

([~~i~~]A) submitting a completed application form;

([~~ii~~]B) paying any applicable fees; and

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

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

([~~c~~]iii) [~~Any~~]any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application [~~shall~~]must successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12([~~h~~]10)([~~1~~]a) before receiving the renewal registration.

(d) [Re-training]re-training.

(i) [~~A~~]a Class A operator [~~shall be~~]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:

([~~ii~~]A) lapsing of certificate of compliance;

([~~iii~~]B) failure to provide acceptable financial responsibility; or

([~~iv~~]C) failure to ensure that Class B and C operators are trained and registered.

([~~e~~]ii) [~~A~~]a Class B operator [~~shall be~~]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:

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

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

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

([~~f~~]iii) [~~To~~]to be re-trained, Class A and Class B operators [~~shall~~]must successfully complete the appropriate Class A or B operator training course and examination, or [~~shall~~]must complete an equivalent re-training course and examination approved by the [~~Director~~]director.

([~~g~~]iv) Class A and B operators [~~shall~~]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~~] director within 30 days of the re-training.

(A) [~~If~~]if the documentation is not received by the [~~Director~~]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~~]to re-register, the operator shall meet the requirements of Subsection R311-201-12([~~h~~]10)([~~1~~]a) and R311-201-12(10)([~~2~~]b).

([~~h~~]v) [~~If~~]if a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(10)([~~i~~]d)([~~1~~]i) or R311-201-12(10)(d) ([~~2~~]ii), re-training [~~shall not be~~]is not required if the Class A or B operator successfully completes and documents re-training under [~~Subsections~~]Subsection R311-201-12([~~i~~]10)([~~3~~]d) [~~and (4)~~] for a prior determination of non-compliance that occurred during the previous nine months.

([~~10~~]11) Reciprocity.

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

(i) submits a completed application form;

(ii) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12([~~h~~]10)([~~1~~]a)([~~D~~]iv)([~~ii~~]B)[~~,~~]; and

(iii) submits payment of any applicable registration fees.

(b) [~~The~~]the Class A or Class B registration [~~shall be~~]is valid until the Utah registration expiration described in Subsection R311-201-

12([~~h~~]10)([~~2~~]b)([~~D~~]vi).

KEY: hazardous substances, administrative proceedings, underground storage tanks, petroleum storage tanks, revocation procedures
Date of Enactment or Last Substantive Amendment: January 1, 2017
Notice of Continuation: March 27, 2017
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 May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R311-203**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Technical Standards.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Clarifying that an installation permit fee will increase based on additional tanks added to that permit. Removing the old EPA 'significant operational compliance' document and updating our rules to reflect the current EPA 'technical compliance rate' document which was developed for owner/operators to use to comply with Rules enacted in 2018. Requirements for reporting the results for testing overfill, automatic tank gauges and line leak detectors on PEI RP-1200 forms which provides consistency in reporting test result but still allows some latitude for them to develop or use different forms as long as they are approved by the director. Clarifying that a responsible person on site is a trained operator.

4. Summary of the new rule or change:

R311-203-3 (5) Clarification that the Installation Permit fee shall be increased based on additional number of tanks being installed.

R311-203-4(6) Updated reference to the current Federal EPA compliance standard (Technical Compliance Rate).

R311-203-5(7) Certified individuals who test overfill, automatic tank gauges and line leak detectors must use the forms found in PEI RP1200 appendices or other forms approved by the director.

R311-203-8(1) Changed responsible person to trained operator. Clarifies that it is the trained operator that's is responsible person on site.

All other changes are updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not alter the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

R311-203-3 (5). This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because this is a clarification and the Installation Permit fees are currently being collected this way.

R311-203-4(6). Rules enacted in 2018 affect the Technical Compliance Rate (TCR) and as facilities work to meet that compliance standard, more may find themselves out of compliance than would have been under the old standard (SOC) guidelines. Obligation to maintain compliance already exists for owner/operators. In general, the State of Utah operates and maintains its USTs in compliance with the regulations, so we don't anticipate that it would significantly impact them. If the state changes their compliance practices so that they were out of compliance for 6 months or more, it would cost them an additional $190 in UST registration fees per tank. Since we can't predict behavior, the actual cost to the state is inestimable.

R311-203-5(7) This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals use these forms currently. The rule additionally allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations

B) Local governments:

R311-203-3 (5). This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because this is a clarification and the Installation Permit fees are currently being collected this way.

R311-203-4(6). Rules enacted in 2018 affect the Technical Compliance Rate (TCR) and as facilities work to meet that compliance standard, more may find themselves out of compliance than would have been under the old standard (SOC) guidelines. Obligation to maintain compliance already exists for owner/operators. In general, local governments operate and maintain t
heir USTs in compliance with the regulations, so we don't anticipate that it would significantly impact them. If local governments change their compliance practices so that they were out of compliance for 6 months or more, it would cost an additional $190 in UST registration fees per tank. Since we can't predict behavior, the actual cost to local governments is inestimable.

R311-203-5(7) This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals use these forms currently. The rule additionally allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations

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

R311-203-3 (5). This rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because this is a clarification and the Installation Permit fees are currently being collected this way.

R311-203-4(6). Although more facilities were found out of compliance immediately after the compliance deadline. Increasingly more facilities are now in compliance and we expect that the number of facilities which remain out of compliance for greater than a six-month period will soon return to historic levels of 10 or fewer each year. By choosing to be out of compliance they choose to pay a higher fee. For small business owned tanks with a 6 months period of non-compliance, it would cost the small business $190 in UST registration fees per tank for the tanks on the PST fund and $80 per tank for those businesses with an alternate form of financial assurance. This higher rate is already charged to owner/operators and we don't anticipate a change in the number of facilities to be charged this fee and we are willing to work with owner/operators of these facilities to reach compliance. For three years we delayed making a change to this definition, to allow businesses time to come into compliance with previously adopted legislation. Since we can't predict behavior, the actual cost to small businesses is inestimable.

R311-203-5(7) This rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals use these forms currently. The rule additionally allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

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

R311-203-3 (5). This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because this is a clarification and the Installation Permit fees are currently being collected this way.

R311-203-4(6). Although more facilities were found out of compliance immediately after the compliance deadline. Increasingly more facilities are now in compliance and we expect that the number of facilities which remain out of compliance for greater than a six-month period will soon return to historic levels of 10 or fewer each year. By choosing to be out of compliance they choose to pay a higher fee. For small business owned tanks with a 6 months period of non-compliance, it would cost the small business $190 in UST registration fees per tank for the tanks on the PST fund and $80 per tank for those businesses with an alternate form of financial assurance. This higher rate is already charged to owner/operators and we don't anticipate a change in the number of facilities to be charged this fee and we are willing to work with owner/operators of these facilities to reach compliance. For three years we delayed making a change to this definition, to allow businesses time to come into compliance with previously adopted legislation. Since we can't predict behavior, the actual cost to non-small businesses is inestimable.

R311-203-5(7) This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because PEI-RP-100 forms are free and available to certified individuals. Most certified individuals use these forms currently. The rule additionally allows for an alternative form to be submitted if approved by the director.

All other changes only update and clarify language to reflect current regulations.

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***)**:**

We are not aware of any person that would be impacted beyond those discussed in the previous four sections.

F) Compliance costs for affected persons:

As described in the previous sections above, only those who choose to not come back into compliance within six months will be affected. Based on improved compliance rates over the past three years, we anticipate the number of facilities subject to this fee to be similar to the number subject to it under the prior definition.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, “The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis.”

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There would not be a direct fiscal cost imposed by this rule, because the obligation to maintain compliance already exists for owner/operators and the higher rate is already charged to owner/operators with a 6 months period of non-compliance. Also, underground storage tank testing forms are free and available and certified individuals’ forms can be accepted by the state if approved by the director.

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

19-6-105		
19-6-403		
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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until (mm/dd/yyyy)**:**		08/02/2021
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

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.			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-203. Underground Storage Tanks: Technical Standards.
R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(1) The owner or operator of an [~~underground storage tank~~]UST [~~shall~~]must notify the [~~Director~~]director whenever:

(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) All notifications [~~shall~~]must be submitted on the current approved notification form.

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

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

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

(b) provide separate notification to the [~~Director~~]director within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(1) Certified UST installers [~~shall~~]must notify the [~~Director~~]director at least 10 days, or another time period approved by the [~~Director~~]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 overfill prevention device;

(h) the installation of a leak detection monitoring system; [~~and~~]or

(i) the installation of a containment sump or under-dispenser containment.

(2) The UST installation company [~~shall~~]must submit to the [~~Director~~]director an UST installation permit fee of $200 when any of the activities listed in Subsection R311-203-3([~~a~~]1)([~~1~~]a) through R311-203-3(1)([~~6~~]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) [~~shall~~]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~~]installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3([~~c~~]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([~~d~~]4), an installation [~~shall be~~]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([~~a~~]1)([~~3~~]d) through R311-203-3([~~a~~]1)([~~6~~]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~~]director of the change.

(a) [~~When~~]when additions are made, the UST installation permit fee shall [~~not be~~]be increased [~~unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined~~]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 [~~shall~~]will not be a factor in determining the UST installation permit fee for that installation.

(a) [~~However,~~]each installation company [~~shall identify itself at the time the UST installation permit fee is paid~~]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 [~~shall~~]must submit to the [~~Director~~]director an as-built drawing[~~, to scale,~~] that meets the requirements of Subsection R311-200-1([~~b~~]2)([~~2~~]b).

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

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

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

(3) The [~~Director~~]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~~]director.

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

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

(b) the [~~underground storage tank~~]UST registration fee has been paid.

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

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

(6) [~~An underground storage tank~~]A UST will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of [~~significant operational~~] compliance with [~~leak prevention or leak detection requirements~~]the EPA Technical Compliance Rate during an inspection, and remains out of compliance for six months or greater following the initial inspection.

(a) [~~The~~]the higher registration fee [~~shall be~~]is due July 1 following the documented six-month period of non-compliance. [~~A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).~~]

(7) When the [~~Director~~]director is notified of the existence of a previously un-registered regulated UST, the [~~Director~~]director shall assess the registration fee for the current fiscal year.

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

R311-203-5. UST Testing Requirements.

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

(a) [~~Tanks~~]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) [~~shall~~]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~~]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 [~~shall~~]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~~]director.

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

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

(5) Cathodic protection testing. Cathodic protection tests [~~shall~~]must meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the [~~Director~~]director. The tester who performs the test [~~shall~~]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/fail determination for each tank, line, flex connector, or other UST system component tested[~~,~~];

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

(f) a site plat showing locations of test points.

(g) [~~A~~]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 [~~shall~~]must include the following as part of the test report:

(a) pass/fail determination for each tank or line tested,

(b) [~~the~~] measured leak rate[~~,~~];

(c) [~~the~~] test duration[~~,~~];

(d) [~~the~~] product level for tank tests[~~,~~];

(e) [~~the~~] pressure used for pressure tests[~~,~~];

(f) [~~the~~] type of test[~~,~~]; and

(g) [~~the~~] 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 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.

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

(1) Secondary containment for tanks and piping.

(a) [~~To~~]to meet the requirements of [~~Section~~]Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an [~~underground storage tank~~]UST system after October 1, 2008 and before January 1, 2017 [~~shall~~]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~~]the secondary containment installed under Subsection R311-203-6([~~a~~]1) [~~shall~~]must meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping.

(i) [~~Monthly~~]monthly monitoring [~~shall~~]must meet the requirements of 40 CFR 280.43(g).

(c) [~~Containment~~]containment sumps for piping [~~that is~~] installed under Subsection R311-203-6([~~a~~]1) [~~shall be~~]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 above[~~-~~]ground; and

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

(d) [~~Containment~~]containment sumps for piping that is installed under Subsection R311-203-6([~~a~~]1) [~~shall~~]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 Subsections R311-203-6([~~b~~]2)([~~2~~]b)[~~(A) through (C)~~].

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

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

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

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

(f) [~~The~~]the requirements of Subsection R311-203-6([~~a~~]1) [~~shall~~]do not apply to:

(i) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)[~~(i) through (v),~~]; or

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

(g) [~~The~~]the requirements of Subsection R311-203-6([~~a~~]1) [~~shall~~] apply to emergency generator USTs installed after October 1, 2008.

(2) Under-dispenser containment.

(a) [~~To~~]to meet the requirements of [~~Section~~]Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an [~~underground storage tank~~]UST, [~~shall~~]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~~]the under-dispenser containment [~~shall~~]must:

(i) be liquid-tight on its sides, bottom, and at all 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 [~~shall~~] be continuously monitored for the presence of liquids.

(c) [~~If~~]if an existing dispenser is replaced, the requirements of Subsection R311-203-6([~~b~~]2) [~~shall~~] apply to the new dispenser if any equipment used to connect the dispenser to the [~~underground storage tank~~]UST system is replaced.

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

(b) [~~The~~]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([~~a~~]1) and R311-203-6([~~b~~]2).

(4) To determine whether the requirements of Subsections R311-203-6([~~a~~]1) and R311-203-6([~~b~~]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 [~~underground tank~~]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/or the location of the intake points for surface water;

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

(iii) water distribution/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 [~~underground storage tank~~]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([~~a~~]1) and R311-203-6([~~b~~]2) apply if the owner or operator installs a potable drinking water well at the facility that is within 1,000 feet of the [~~underground tanks~~]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, all tanks and product piping that are installed or replaced as part of an [~~underground storage tank~~]UST system on or after January 1, 2017 [~~shall~~]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 [~~shall~~]must perform periodic inspections in accordance with 40 CFR 280.36.

(a) [~~Inspections~~]inspections [~~shall~~]must be conducted by or under the direction of the designated Class B operator.

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

(3) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and Section R311-204-4 [~~shall~~]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) [~~shall~~]must conduct the visual checks monthly and report the results on the operator inspection form.

R311-203-8. Unattended Facilities.

(1) A facility that:

(a) normally has no employee on site or [~~other responsible person on site, or~~] is open to dispense fuel at times when no employee or [~~responsible person~~]trained operator is on site[~~, shall~~]must have:

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

([~~b~~]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 Enactment or Last Substantive Amendment: January 3, 2017
Notice of Continuation: March 27, 2017

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

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R311-204**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Closure and Remediation.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Removal of a redundancy dealing with tank disposal. Change the 72 hours notification requirement to clarify that it means 3 business days. Make a correction in labeling a tank for disposal to indicate “substance contained” instead of “contained petroleum” since substances other than petroleum are also regulated.

4. Summary of the new rule or change:

R311-204-2(3). Removed “tank disposal” from list of items addressed in closure plan because it’s addressed in R311-204-3. It’s a redundancy.

R311-204-2(8). Changed the notification requirement for closure activities from 72 hours to 3 business days.

R311-204-3(1). Changed “contained petroleum” to “substance contained” because it may have contained a non-petroleum product that would be regulated by the UST program,

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not alter the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

B) Local governments:

This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impacts on small business's revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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 businesses revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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***)**:**

We are not aware of any person that would be impacted.

F) Compliance costs for affected persons:

No compliance costs are anticipated.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, "The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis."

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are just minor corrections and clarifications.

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

19-6-105		
19-6-402		
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

Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-204. Underground Storage Tanks: Closure and Remediation.
R311-204-1. Definitions.

Definitions are found in Section R311-200.

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

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

(a) [~~The~~]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.

(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, including: [~~tank disposal handling and final disposal site,~~]

(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 [~~underground storage tank~~]UST shall be permanently closed or undergo change-in-service prior to the owner or operator receiving final approval of the submitted permanent tank closure plan by the [~~Director~~]director, except as outlined in Subsection R311-204-2(b).

(a) [~~Closure~~]closure plan approval [~~shall be~~]is effective for a period of one year.

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

(5) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the [~~Director~~ 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~~]director prior to implementation, and must be submitted in writing to the [~~Director~~]director.

(8) The [~~Director~~]director [~~shall~~]must be notified at least [~~72 hours~~]three business days prior to 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[~~, and~~];

(b) [~~"contained petroleum, removed: month/day/year".~~]the substance contained; and

(c) the date removed: "month/day/year".

(2) Removed tanks shall be expeditiously disposed of as regulated [~~underground storage tanks~~]USTs by the following methods:

(a) [~~The~~]the tank may be cut up after the interior atmosphere is first purged or inerted.

(b) [~~The~~]the tank may be crushed after the interior atmosphere is first purged or inerted.

(c) [~~The~~]the tank may not be used to store food or liquid intended for human or animal consumption.

(d) [~~The~~]the tank may be disposed of in a manner approved by the [~~Director~~]director.

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

R311-204-4. Closure Notice.

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

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

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

(b) [~~Effective~~]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) [~~underground storage tank~~]UST 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~~]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 [~~underground storage tanks~~]USTs that are temporarily closed for a period greater than three months [~~shall~~]must submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

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

R311-204-5. Remediation.

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

(2) At the time of UST closure, a certified UST [~~Remover~~]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~~]director, in addition to the minimum amount required for closure of the UST.

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

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

KEY: hazardous substances, petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: October 10, 2014
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-402; 19-6-403

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R-311-205**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Site Assessment Protocol.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Removing obsolete references and incorporating a sampling standard that's available to the public. Also adding clarification that air samples are included in environmental media.

4. Summary of the new rule or change:

R311-205-2. Removes documents incorporated by reference that are out of date or not easily available to the public.
Incorporates by reference the "Utah Petroleum Storage Tank Environmental Media Sampling Handbook, dated June 1, 2021".

R311-205-2. Changed "environmental samples" to "environmental media samples"

R311-205-2(c). Change the "Petroleum Storage Tank Trust Fund" to "Environmental Assurance Program" for clarification.

R311-205-2(d). Added the sampling of air to types of environmental media.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule change is not expected to have any fiscal impacts to the state government revenues or expenditures because these changes are just the removal of obsolete documents and the incorporation of new references. The other changes are just clarifications and corrections.

B) Local governments:

This proposed rule change is not expected to have any fiscal impacts to the local governments revenues or expenditures because these changes are just the removal of obsolete documents and the incorporation of new references. The other changes are just clarifications and corrections.

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

This propo
sed rule change is not expected to have any fiscal impacts to the small businesses revenues or expenditures because these changes are just the removal of obsolete documents and the incorporation of new references. The other changes are just clarifications and corrections.

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

This proposed rule change is not expected to have any fiscal impacts to the non-small businesses revenues or expenditures because these changes are just the removal of obsolete documents and the incorporation of new references. The other changes are just clarifications and corrections.

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 proposed rule change is not expected to have any fiscal impacts on other individuals' revenues or expenditures because these changes are just the removal of obsolete documents and the incorporation of new references. The other changes are just clarifications and corrections.

F) Compliance costs for affected persons:

No anticipated cost, however there is a potential time savings because of an increase in efficiency in locating guidance documents.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, "The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis."

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are just the removal of obsolete documents and the incorporation of new references.

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
19-6-105		
19-6-403		
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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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*)**:**	
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Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

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.			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-205. Underground Storage Tanks: Site Assessment Protocol.
R311-205-1. Definitions.

Definitions are found in Rule R311-200.

R311-205-2. Site Assessment Protocol.

(1) General Requirements.

(a) [~~When~~]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 [~~a site assessment or a site check~~] according to [~~the protocol outlined in~~] Rule R311-205 or equivalent, as approved by the [~~Director~~] director.

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

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

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

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

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

(c) all 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.

([~~c~~]d) Owners and operators must document and report to the [~~Director~~]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.

([~~d~~]e) [~~The~~]the owner or operator [~~shall~~]must report the discovery of any release or suspected release to the [~~Director~~]director within [~~twenty-four~~]24 hours.

(i) [~~Owners~~]owners or operators [~~shall~~]must begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release.

(ii) [~~Owners~~]owners or operators [~~shall~~]must begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

([e]f) [~~All~~]all environmental media samples [~~shall~~]must be collected by a certified [~~groundwater and soil~~] sampler who meets the requirements of Rule R311-201.

(i) [~~The~~]the certified [~~groundwater and soil~~] sampler shall record the depth below grade and location of each sample collected to within one foot.

([~~f~~]g) [~~All~~]all environmental media samples [~~shall~~]must be analyzed within the time frame allowed, in accordance with [~~Table 4.1 of "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1)~~]the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, by a [~~Certified Environmental Laboratory~~]certified environmental laboratory.

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

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

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

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

(ii) [~~Additional~~]additional confirmation samples may be required as determined by the [~~Director~~]director.

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

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

(i) [~~Techniques~~]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~~]director, may be used to satisfy requirements of determining native soil type.

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

(2) Site [~~Assessment Protocol~~]assessment protocol for UST [~~Closure~~]closure.

(a) [~~The~~]the appropriate number of environmental media samples, as described in [~~Subsection~~]Subsections R311-205-2([~~b~~]2)[~~(4)~~] 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~~]any other samples required by Subsection R311-205-2([~~a~~]1) must also be collected.

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

(A) [~~If~~]if groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2([~~b~~]2)[~~(4)~~] and R311-205-2(3) shall be collected from the unsaturated zone immediately above the capillary fringe.

(iii) [~~Groundwater~~]groundwater samples collected from an excavation shall be collected using proper surface water collection techniques[~~, from a properly installed groundwater monitoring well~~]according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, or as determined by the [~~Director~~]director.

(b) [~~All~~]all environmental media samples [~~shall~~]must be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2([~~d~~]2) and R311-205-2(5).

([~~b~~]c) [~~One~~]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~~]for all dispenser islands, only one representative sample to determine native soil type is required.

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

([~~c~~]d) [~~For~~]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.

([~~d~~]3) Environmental[~~Sampling Protocol~~]sampling protocol for UST closures[~~:~~].

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

(i) [~~If~~]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.

([~~ii~~]b) [~~For~~]for a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area.

(i) [~~If~~]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.

([~~iii~~]c) [~~Product~~]product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections, and fittings[~~, at~~].

(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~~]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.

([~~iv~~]d) [~~For~~]for dispenser islands, environmental media samples shall be collected from the middle of each dispenser island.

(i) [~~Additional~~]additional environmental media samples [~~shall~~]must be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled.

(ii) [~~If~~]if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.

([~~3~~]4) Site [~~Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program~~]check requirements for re-applying to participate in the Environmental Assurance Program.

(a) [~~Owners~~]owners or operators wishing to re-apply for participation in the [~~Petroleum Storage Tank Trust Fund~~]Environmental Assurance Program following a period of lapse or non-participation [~~shall~~]must perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a).

(i) [~~The~~]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~~]the owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program.

(i) [~~The Director~~]the director shall review and approve the site check plan prior to its implementation.

(c) [~~The~~]the site check [~~shall~~]must meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2([~~b~~]2), or as determined by the [~~Director~~]director on a site-specific basis.

(d) [~~Additional~~]additional sampling may be required by the [~~Director~~]director based on review of the proposed site check plan and site-specific conditions.

([~~4~~]5) Laboratory [~~Analyses of Environmental Samples~~]analyses of environmental media samples.

(a) [~~Environmental~~]environmental media samples which have been collected to determine levels of contamination from [~~underground storage tanks shall~~]USTs must be analyzed by a [~~Certified Environmental Laboratory~~]certified environmental laboratory.

(b) [~~Unless~~]unless otherwise approved by the [~~Director~~]director, the required analytes and corresponding analytical methods shall be:

(i) [~~Gasoline~~]for gasoline contamination[~~-~~]:

(A) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C_6 - C_{10}) 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) [~~Diesel~~]for diesel fuel contamination[~~-~~]:

(A) total petroleum hydrocarbons (extractable TPH as diesel range organics C_{10} - C_{28}) by EPA 8015; and

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

(iii) [~~Used~~]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) [~~New~~]for new oil contamination[~~-~~]:

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

(v) [~~Contamination~~]contamination from [~~underground storage tanks~~]USTs which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the [~~Director~~]director.

(vi) [~~Contamination~~] for contamination of an unknown petroleum product type[~~-~~]:

(A) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C_6 - C_{10}) by either EPA 8015 or EPA 8260;

(B) total petroleum hydrocarbons (extractable TPH as diesel range organics C_{10} - C_{28}) 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.

([~~b~~]c) [~~All~~]all original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed.

(d) [~~Environmental~~]environmental media samples [~~shall~~]must be collected and transported under chain of custody according to EPA methods as approved by the [~~Director~~]director.

([~~c~~]e) [~~Reporting~~]reporting limits used by laboratories analyzing environmental media samples taken under this rule shall be below [~~initial screening levels~~]Initial Screening Levels for the contaminated media under study.

(i) [~~Environmental~~]environmental media samples shall be analyzed with the least possible dilution to ensure reporting limits are below [~~initial screening levels~~]Initial Screening Levels to the extent possible.

(ii) [~~If~~]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~~]as an alternative to diluting environmental media samples, the laboratory shall [~~consider using~~]use appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference.

(iii) [~~Any~~]any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

KEY: petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: February 14, 2011
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-413

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R-311-206**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

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

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Removed the requirement for testing secondary containment interstitial space of tanks and piping for purpose of risk calculation in applying for an Environmental Assurance Fee Rebate This language was added to the rule in anticipation that it would be required by the October 13, 2015 federal underground storage tank (UST) regulations. This turned out not to be the case.

Removed the document “EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix” that is incorporated by reference. This document was replaced by “UST and LUST Performance Definitions as of October 2018” which contains the ”EPA UST Technical Compliance Rate” which is incorporated by reference in R311-201-(k)(2)(A)(i).

4. Summary of the new rule or change:

R311-206. Changed “the Fund” to “the Environmental Assurance Program”

R311-206-4(3) this rule is outdated and no longer relevant so it was deleted.

R311-206-4(4). Moved for clarification the requirement for the owner or operator to submit an independent audit to demonstrate net worth for self-insurance.

R311-206-4(5) Moves the wording that the director may require owner to submit independent audit.

R311-206-9(4). Add a requirement that for any facility that participates in the Environmental Assurance Program and is sold to a company with facilities that do not participate in the Environmental Assurance Program, the date of termination of coverage is the closing date for the real estate transaction. The purchaser shall provide documentation of the closing date to the director within 30 days of closing.

R311-206-10(2). Update compliance status determination using the ”EPA UST Technical Compliance Rate”. Removes the document incorporated by reference “EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix”

R311-206-11(3). Remove secondary containment interstitial space testing requirement for tanks for purpose of risk calculation in applying for an Environmental Assurance Fee Rebate.

R311-206-11(4). Remove secondary containment interstitial space testing requirement for piping for purpose of risk calculation in applying for an Environmental Assurance Fee Rebate.

R311-206-11(5). Remove secondary containment interstitial space testing requirement for piping containment sumps and under-dispenser containment for purpose of risk calculation in applying for an Environmental Assurance Fee Rebate.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

R311-206-9(4) This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all state-owned facilities are required by statute to participate in the Environmental Assurance Program.

R311-206-10(2). This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because it only updates the document used for determining compliance and removes an older document which was incorporated by reference.

R311-206-11(3), (4) & (5)
Direct Fiscal Benefit to State owned facilities with USTs. The 73 State owned UST sites could see an approximate total combined benefit of $3,700 per year by being qualified as secondarily contained without having to test the double walled tanks and lines. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance fund by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impacts on state government revenues or expenditures because these proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

B) Local governments:

R311-206-9(4) This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because it just clarifies an existing requirement and defines a timeline.

R311-206-10(2). This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because it only updates the document used for determining compliance and removes an older document which was incorporated by reference.

R311-206-11(3), (4) & (5). Direct Fiscal Benefit to local governments owned facilities with USTs. There are approximately 33 sites owned by local government that are qualified as secondarily contained and will not have to test the double walled tanks and lines. The approximate total benefit for all these facilities combined is $2,800 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance fund by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impacts on local governments revenues or expenditures because these proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

R311-206-9(4) This rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because it just clarifies an existing requirement and defines a timeline.

R311-206-10(2). This rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because it only updates the document used for determining compliance and removes an older document which was incorporated by reference.

R311-206-11(3), (4) & (5). Direct Fiscal Benefit to small business owned facilities with USTs. There are approximately 176 small business owned sites that are qualified as secondarily contained and will not have to test the double walled tanks and lines. The approximate total benefit for all these facilities combined is $136,700 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance fund by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impacts on small businesses revenues or expenditures because these proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

R311-206-9(4) This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because it just clarifies an existing requirement and defines a timeline.

R311-206-10(2). This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because it only updates the document used for determining compliance and removes an older document which was incorporated by reference.

R311-206-11(3), (4) & (5). Direct Fiscal Benefit to non-small business owned facilities with USTs. There are approximately 332 non-small business owned sites that are qualified as secondarily contained and will not have to test the double walled tanks and lines. The approximate total benefit for all these facilities combined is $271,500 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance fund by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impacts on non-small businesses revenues or expenditures because these proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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***)**:**

R311-206-9(4). This rule change is not expected to have any fiscal impacts on other individuals' revenues or expenditures because it just clarifies an existing requirement and defines a timeline.

R311-206-10(2). This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because it only updates the document used for determining compliance and removes an older document which was incorporated by reference.

R311-206-11(3), (4) & (5). Direct Fiscal Benefit to other persons owned facilities with USTs. There are 3 other person owned sites that are qualified as secondarily contained and will not have to test the double walled tanks and lines. The approximate total benefit for all these facilities combined is $1,100 per year. This estimate was reached using data from calendar year 2020 and assumes a one-tier improvement, resulting in a 15% rebate of the Environmental Assurance fee for eligible facilities. The rebates will reduce annual revenue collected into the Environmental Assurance fund by this amount as intended by the statute.

All other changes in this rule are not expected to have any fiscal impacts on other persons revenues or expenditures because these proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

F) Compliance costs for affected persons:

None. The proposed changes are a benefit to owners of USTs who previously did not qualify for a rebate from of the Environmental Assurance fee. The other proposed changes are for simplicity and clarification or just updates a document and have no compliance costs.

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	**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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$3,700	$3,700	$3,700
Local Governments	$2,800	$2,800	$2,800
Small Businesses	$136,700	$136,700	$136,700
Non-Small Businesses	$271,500	$271,500	$271,500

Other Persons	$1,100	$1,100	$1,100
Total Fiscal Benefits	**$415,800**	**$415,800**	**$415,800**
Net Fiscal Benefits	**$415,800**	**$415,800**	**$415,800**

H) Department head approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, "The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis."

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Underground storage tanks owners and operators will see a direct fiscal benefit from the rule change by not having to test their secondary containment to qualify for a rebate of the environmental assurance fee for eligible facilities.

B) Name and title of department head commenting on the fiscal impacts:

Kimberly D. Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

19-6-105	19-6-428	
19-6-403		
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*)**:**

	First Incorporation
Official Title of Materials Incorporated (from title page)	EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix
Publisher	EPA
Date Issued	3/03/2005
Issue, or version	https://www.epa.gov/ust/significant-operational-compliance-soc-performance-measures

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

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.			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
R311-206-1. Definitions.

Definitions are found in Rule R311-200.

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

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

(a) meet all requirements for participation in the Environmental Assurance Program[~~,~~]; or

(b) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(2) Owners or operators [~~shall~~]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) For the purposes of Subsection 19-6-412(6), all tanks at a facility [~~shall~~]must be covered by the same financial assurance mechanism, and [~~shall~~]must be considered to be in one area, unless the [~~Director~~]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~~]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;

(c) the UST test, conducted within [~~6~~]six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(d) the owner or operator has submitted a letter to the [~~Director~~]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~~]director, and has declared the financial assurance mechanism that will be used;

(f) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees;

(g) the owner or operator has submitted an as-built drawing that meets the requirements of Subsection R311-200-1([~~b~~]2)([~~2~~]b); 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~~]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~~]director, any

[~~Petroleum Storage Tank~~]petroleum storage tank fee for that tank for the current fiscal year [~~shall be~~]is due when the tank is brought into use, as a requirement for receiving a [~~Certificate of Compliance~~]certificate of compliance.

[~~(3) In accordance with Subsection 19-6-411(6), the [Director]~~ director ~~may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director~~.]

([~~4~~]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.

([~~5~~]4) Auditing of UST facility throughput records.

(a) [~~Owners~~]owners and operators [~~shall~~]must retain for seven years the monthly tank throughput records of the facility.

(b) [~~Tank~~]tank throughput records shall include all financial and product documentation for receipts, [~~dispositions~~]deliveries, transfers, and inventories.

([~~b~~]c) [~~The Director~~]the director may audit or [~~order~~]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~~]records [~~shall~~]must be made available at the Department for inspection within 30 calendar days after receiving notice from the [~~Director~~]director.

(ii) [~~Audits~~]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~~]auditing tank throughput may be accomplished by any method approved by the [~~Director~~]director.

(iv) [~~All~~]all costs of an independent audit shall be paid by the owner or operator.

([~~6~~]5) Owners or operators eligible for [~~coverage by the Fund shall~~]participation in the Environmental Assurance Program must demonstrate financial assurance for the difference between coverage provided by the [~~Fund~~]Environmental Assurance Program and coverage amounts required by 40 CFR 280 Subpart H.

(a) [~~If~~]if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, [~~the owner or operator~~]they must document a tangible net worth of $10,000 upon request and to the satisfaction of the [~~Director~~]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~~]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~~]the processing fee requirement referenced in Subsection R311-206-5([~~b~~]2) is not applicable because the administrative cost is covered by

the [~~PST fund~~]Environmental Assurance Program fee. [~~However, the Director may require the owner or operator to submit an independent audit to demonstrate net worth for self-insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(e)(2).~~]

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

(1) Owners and operators who elect to utilize an alternate form of financial assurance [~~shall~~]must use one or a combination of mechanisms specified in 40 CFR 280.94.

(a) [~~Owners~~]owners and operators [~~shall~~]must submit to the [~~Director~~]director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

([~~a~~]b) [~~Formats~~]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.

([~~b~~]c) [~~If~~]if the financial assurance documentation submitted to the [~~Director~~]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~~]processing fees for subsequent reviews of financial assurance documents [~~shall be~~]are due on July 1 of the fiscal year for which the review is required.

([~~a~~]b) [~~Pursuant~~]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~~]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~~]a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5([~~b~~]2) [~~above~~].

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

(3) Evidence of a current and approved financial assurance mechanism [~~shall~~]must be reported to the [~~Director~~]director as follows:

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

(b) [~~Owners~~]owners and Operators using insurance and risk retention group coverage for financial assurance [~~shall~~]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~~]director within 30 days of acceptance of such policy by the insurer or risk retention group.

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

(ii) [~~The~~]the insurer [~~shall~~]must have a rating of A- or greater by A.M. Best Co.

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

(d) [~~Owners~~]owners and operators using a fully funded trust fund for financial assurance [~~shall~~]must submit proof of the trust fund and formal certification of acknowledgement to the [~~Director~~] director within 30 days after implementation of the trust fund.

(e) [~~Owners~~]owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the [~~Director~~]director within 30 days of issuance.

(i) [~~The~~]the owner or operator [~~shall~~]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~~]owners and operators using a surety bond for financial assurance [~~shall~~]must submit the surety bond document, standby trust fund, and certification of acknowledgement to the [~~Director~~]director within 30 days of issuance.

(g) [~~Guarantees~~]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~~]owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 [~~shall~~]must submit the letter from chief financial officer and associated documents to the [~~Director~~]director within 120 days of the end of the owner[~~/operator's~~], operator, or guarantor's fiscal year.

(4) The [~~Director~~]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~~]information requested [~~shall~~]must be reported to the [~~Director~~]director within 30 calendar days after receiving the request.

([~~a~~]b) [~~Owners~~]owners and operators [~~shall~~]must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

([~~b~~]c) [~~Owners~~]owners and operators [~~shall~~]must keep records of all financial assurance mechanisms [~~for a period of three years~~]in accordance with 40 CFR 280.111 and 280.113.

([~~c~~]d) [~~The Director~~]the director may audit or [~~order~~]commission an audit of records supporting the financial assurance mechanism at any time.

(i) [~~Audits~~]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~~]auditing of financial assurance methods may be accomplished by any method approved by the [~~Director~~]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~~]director [~~shall be~~]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~~]director.

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

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

(a) meeting the requirements of Section 19-6-428 and [~~Subsection~~]Subsections 19-6-415(1) and [~~Subsection~~] R311-206-3([~~a~~]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 above[~~-~~]ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(a) meeting the requirements of Section 19-6-428 and [~~Subsection~~]Subsections 19-6-415(2) and [~~Subsection~~] R311-206-3([~~a~~]1);

(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 above[~~-~~]ground tanks every five years, using a tightness test method capable of properly testing the tank.

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

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

(2) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7([~~a~~]1) may have the certificate reissued by the [~~Director~~]director after the owner or operator demonstrates compliance with [~~Subsection~~]Subsections 19-6-412(2), [~~Subsection~~] 19-6-428(3), and Section R311-206-3.

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

(4) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the [~~fund~~]Fund lapse under [~~Section~~]Subsection 19-6-411(3)(c)(ii) [~~shall~~]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 Fund, the eligibility to make a claim against the Fund [~~shall~~]will terminate as specified in Section R311-207-2.

(a) [~~Permanently~~]permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the [~~Director~~]director may revoke a certificate of compliance for the owner's or operator's failure to comply with 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), the [~~Director~~]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[~~, or~~];

(b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5)[~~, or~~];

(c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8([~~a~~]1)([~~4~~]d)[~~,~~]; or

(d) that is a new installation, and has not been issued a certificate of compliance.

(2) In accordance with Subsection 19-6-403(1)(b)(i), the [~~Director~~]director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank does not have:

(a) [~~does not have~~] spill prevention equipment required under 40 CFR 280.20(c) or [~~40 CFR~~] 280.21(d)[~~, or~~];

(b) [~~does not have~~] overfill prevention equipment required under 40 CFR 280.20(c) or [~~40 CFR~~] 280.21(d)[~~, or~~];

(c) [~~does not have~~] equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D[~~,~~]; or

(d) [~~does not have~~] equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

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

(4) 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([~~e~~]5).

(5) The [~~Director~~]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) The delivery prohibition tag [~~shall~~]must remain in place until the [~~Director~~] director issues:

(a) for tanks that have a tag in place in accordance with Subsection R311-206-8([~~a~~]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([~~b~~]2):

(i) written authorization to remove the delivery prohibition tag.

(7) If a delivery prohibition tag is removed without the authorization specified in [~~Subsection~~]Subsections R311-206-8([~~f~~]6)([~~1~~]a)([~~B~~]ii) or [~~Subsection~~] R311-206-8([~~f~~]6)([~~2~~]b)([~~A~~]i), the UST owner or operator [~~shall~~]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 who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the [~~program~~]Environmental Assurance Program 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[~~. Rule~~]and Rules R311-204[~~.~~] and [~~Rule~~] R311-205[~~.~~]; or

(b) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5[~~.~~]; and

(ii) notifying the [~~Director~~]director in writing at least 30 days before the date of cessation of participation in the [~~program~~]Environmental Assurance Program, and specifying the date of cessation.

(A) [~~The Director~~]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 [~~USTs~~]petroleum storage tanks owned or operated by the owner or operator.

(B) [~~The~~]the date of cessation of participation in the [~~program~~]Environmental Assurance Program may occur after the date designated in Subsection R311-206-9([~~a~~]1)([~~2~~]b)([~~B~~]ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) [~~The fund will not give~~] pro-rata refunds will not be given.

(3) For tanks being removed voluntarily from the [~~program~~]Environmental Assurance Program, the date of cessation of participation in the [~~program~~]Environmental Assurance Program shall be the date on which coverage under the [~~program~~]Environmental Assurance Program ends.

(a) [~~Subsequent~~]subsequent claims for payments from the [~~fund~~]Fund must be made in accordance with [~~Section~~]Sections 19-6-424 and [~~Section~~] R311-207-2.

(4) For any facility that participates in the Environmental Assurance Program and is sold to a company with facilities that do not participate in the Environmental Assurance Program, 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 in the Environmental Assurance Program [~~shall~~]must, before any subsequent participation in the [~~program~~]Environmental Assurance Program, meet the following requirements:

(a) notify the [~~Director~~]director of the intent to participate in the [~~program~~]Environmental Assurance Program;

(b) comply with the requirements of Subsection 19-6-428(3)[~~,~~]; and

(c) meet the requirements of Subsection R311-206-3([~~a~~]1) to qualify for a new certificate of compliance.

(2) In accordance with Subsection 19-6-428(3)(b), the [~~Director~~ director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each [~~UST~~]petroleum storage tank to participate in the [~~program~~]Environmental Assurance Program, meets the following requirements at the time the owner or operator applies for participation:

(a) [~~The~~]the last two compliance inspections verify [~~significant operational~~] compliance with EPA UST Technical Compliance Rate, and verify that no release has occurred. [~~Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.~~]

(b) [~~The owner or operator documents~~]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.

(c) [~~The~~]the period of non-participation in the Environmental Assurance Program is less than six months, or the [~~UST~~]petroleum storage tank is less than ten years old.

R311-206-11. Environmental Assurance Fee Rebate [~~Program~~].

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the Environmental Assurance Program, [~~shall receive~~]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~~]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 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 [~~UST~~]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[~~, or~~].

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

~~(A) requirements developed by the manufacturer, or~~

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

(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([~~d~~]4)([~~2~~]b)([~~A~~]i)[~~, and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure, or liquid test in accordance with criteria listed in Subsection (c)(2)(C)~~].

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

[~~(a)~~]be double-walled with monthly documentation of monitoring of the space between the walls.[~~, or~~

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

~~(i) requirements developed by the manufacturer, or~~

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

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

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

on the date the facility begins participation in the Environmental Assurance Program.

KEY: [~~hazardous substances,~~]petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: January 1, 2017
Notice of Continuation: March 27, 2017
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 May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R-311-207**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

The Board and the Director of the DERR are tasked with making rules and administering the UST program. Several years ago, as legislation regarding the PST Fund was under consideration by the legislature, the Division received direction from the Legislature to review the Environmental Assurance Program reimbursement process. In 2018, the Division conducted an internal audit of several PST Fund claim reimbursement submissions. One major finding was that similar common tasks were being submitted for reimbursement from the Petroleum Storage Tank (PST) Trust Fund with high variability in hours, costs, and the level of personnel completing the tasks. Some task's variability ranged as high as four times that of other similar submissions. This audit led to the development of the "Cost Guidelines for Utah Underground Storage Tank Sites". This document establishes the framework for a standardized and consistent approach for work done by State Contractors and for PST Trust Fund reimbursements.

4. Summary of the new rule or change:

R311-207-3(8) Clarification of eligibility determination process.

R311-207-4(2)(a) Clarification of signature requirement for reimbursement from the PST Fund.

R311-207-4 Remove pay for performance reimbursement to claimants.

R311-207-4(8)(a)(i) Move "related parties" to definitions.

R311-207-4(8)(a)(ii) Incorporation of forms presented and incorporated by reference in the Cost Guidelines document.

R311-207-4(8)(a) Remove yearly approval of competitive bid schedule for frequently used services.

R311-207-4(8)(b) Eliminate sole source justification for analytical laboratories. Replaced with Cost Guidelines.

R311-207-5 Remove the document "table of Utah petroleum storage tank trust fund and material reimbursement standards" and "Utah petroleum storage tank trust fund maximum allowable rate list for equipment and supplies" that is incorporated by reference and replace with the Cost Guidelines document.

R311-207-5(2) Added the Cost Guidelines for reimbursement of claims.

R311-207-5(4) Added the Cost Guidelines document.

R311-207-5(6) Incorporate director's ability to request audits of PST reimbursable work and records.

R311-207-7 Remove the document "Consultant Personnel Qualifications and Task Description table" that is incorporated by reference and replace with the requirement found in the Cost Guidelines document. Remove language referring to fee schedules for reimbursement by the PST Fund and replace with the Cost Guidelines document.

R311-207-9(1)(b) Remove requirement for approved PST Trust Fund labor rates and refer to the Cost Guidelines document.

Updating rule references.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

R311-207-3(8) – This rule change is not expected to have any fiscal impacts because it is a clarification and updating of titles and wording.

R311-207-4(2)(a) – This rule change is not expected to have any fiscal impacts because it is clarification and updating of titles and wording. It also gives clarification of a signature requirement on a claim.

R311-207-4 – This rule change is not expected to have any fiscal impacts because it removed an option that is outdated and no longer used.

R311-207-4(8)(a)(ii) DERR Personnel and PST Trust Fund – Fiscal Cost Inestimable. Relevant data is unavailable.
Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve rates for statement of qualifications.

R311-207-4(8)(b) PST Trust Fund – Fiscal Cost Inestimable. Relevant data is unavailable. Laboratory reimbursement rates are being standardized with the Cost Guidelines.

R311-207-5 PST Trust Fund, State Lead LUST Trust, and Responsible Party LUST – Fiscal Cost Inestimable. Relevant data is unavailable.
Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve rates for statement of qualifications.

R311-207-5(2) PST Trust Fund – Fiscal Cost Inestimable. Relevant data is unavailable. Use of the Cost Guidelines helps standardizes costs, rates, and common equipment to be reimbursed on claims.

R311-207-5(4) PST Trust Fund, State Lead LUST Trust, and Responsible Party LUST – This rule change is not expected to have any fiscal impacts because it is clarification and updates with added Cost Guidelines for clarity.

R311-207-5(6) DEQ Auditor - Fiscal Cost to Division.
DEQ Auditor's time charged for performing audits. Ensure accuracy and consistency of charges submitted and reimbursed.

R311-207-7 PST Trust Fund, State Lead LUST Trust, and Responsible Party LUST – Fiscal Savings Inestimable. Relevant data is unavailable.
Standardizes labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Consumer Price Index removing the need for yearly bidding by contractors.

R311-207-9(1)(b) PST Trust Fund, State Lead LUST Trust, and Responsible Party LUST – Fiscal Cost Inestimable. Relevant data is unavailable.
Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve yearly rates for statement of qualifications.

B) Local governments:

No fiscal impacts are anticipated.

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

R311-207-3(8) Contractors for UST Owners/Operators – This rule change is not expected to have any fiscal because it is a clarification and updating of titles and wording.

R311-207-4(8)(a) Contractors for UST Owners/Operators – Cost Inestimable Fiscal. Relevant data is not available. Cost of yearly bidding is not reported but is anticipated to be a cost savings.

R311-207-4(8)(a)(i) Contractors for UST Owners/Operators – This rule change is not expected to have any fiscal impacts because it moved “related parties” to the definitions.

R311-207-4(8)(b) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Relevant data is unavailable. Laboratory reimbursement rates are being standardized with the Cost Guidelines.

R311-207-5 Contractors for UST Owners/Operators – Cost Inestimable Fiscal. Relevant data is unavailable. Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve rates for statement of qualifications.

R311-207-5(2) PST Trust Fund – Fiscal Cost Inestimable. Relevant data is unavailable. Use of the Cost Guidelines helps standardizes costs, rates, and common equipment to be reimbursed on claims.

R311-207-5(4) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Relevant data is unavailable. Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of eligible leaking petroleum storage tank costs. Eliminates the need to review and approve rates for statement of qualifications.

R311-207-5(6) Contractors for UST Owners/Operators - Fiscal Cost Inestimable. Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-207-7 Contractors for UST Owners/Operators – Fiscal Savings Inestimable. Relevant data is unavailable. Standardizes labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Consumer Price Index removing the need of yearly bidding by contractors.

R311-207-9(1)(b) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Relevant data is unavailable. Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve yearly rates for statement of qualifications.

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

R311-207-4(8)(a) Contractors for UST Owners/Operators – Cost Inestimable Fiscal. Relevant data is not available. Cost of yearly bidding is not reported but is anticipated to be a cost savings.

R311-207-4(8)(a)(i) Contractors for UST Owners/Operators – This rule change is not expected to have any fiscal impacts because it moved “related parties” to the definitions.

R311-207-4(8)(b) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Relevant data is unavailable. Laboratory reimbursement rates are being standardized with the Cost Guidelines.

R311-207-5 Contractors for UST Owners/Operators – Cost Inestimable Fiscal. Relevant data is unavailable. Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve rates for statement of qualifications.

R311-207-5(4) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Relevant data is unavailable. Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of eligible leaking petroleum storage tank costs. Eliminates the need to review and approve rates for statement of qualifications.

R311-207-5(6) Contractors for UST Owners/Operators - Fiscal Cost Inestimable. Audits will be conducted based on random selection and at the discretion of the Director. Audits are to ensure accuracy and consistency of charges submitted and reimbursed.

R311-207-7 Contractors for UST Owners/Operators – Fiscal Savings Inestimable. Relevant data is unavailable.

Standardizes labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Consumer Price Index removing the need for yearly bidding by contractors.

R311-207-9(1)(b) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Relevant data is unavailable.
Standardizes costs and rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Eliminates the need to review and approve yearly rates for statement of qualifications.

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***)**:**

R311-207-4(8)(a) Contractors for UST Owners/Operators – Cost Inestimable Fiscal. Relevant data is not available.
Cost of yearly bidding is not reported but is anticipated to be a cost savings.

R311-207-7 DERR Personnel – Fiscal Savings Inestimable. Relevant data is unavailable.
Standardizes labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Consumer Price Index removing the need for yearly bidding.

R311-207-9(1)(b) Contractors for UST Owners/Operators – Fiscal Cost Inestimable. Analysis will be prohibitively expensive. Standardized costs replacing individual company approved rates and simplifying process. Over-all net change is expected to be small but variability in work and contractors selected by Owners/Operators is different each year. Standardizes labor rates to help reduce variability in similar work and to establish a consistent framework for approval, submission, and reimbursement of leaking petroleum storage tank costs. Costs are fixed to current market rates for a two-year term and updated based on the Consumer Price Index removing the need for yearly bidding.

F) Compliance costs for affected persons:

Audits of records for reimbursement are not expected to add a significant cost outside of the State Government because the maintenance of these records is already required. Additional costs will be incurred by the Petroleum Storage Tank Trust Fund for the hours billed by the Department of Environmental Quality Auditor when conducting these audits. The audits may be determined by random selection or for verification of accuracy of records submitted for reimbursement. The cost incurred by these audits to the Petroleum Storage Tank Trust Fund cannot be calculated because of the variability in the time required and volume of the records.

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	**FY2021**	**FY2022**	**FY2023**
State Government	$0	$4,000	$4,000
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**	**$4,000**	**$4,000**
Fiscal Benefits			
State Government	$9,408	$5,408	$5,408
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$4,000	$4,000
Total Fiscal Benefits	**$9,408**	**$9,408**	**$9,408**
Net Fiscal Benefits	**$9,408**	**$5,408**	**$5,408**

H) Department head approval of regulatory impact analysis:

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, “The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis.”

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These changes are to clarify existing rules and provide a standardized and consistent framework for common work requirements and reimbursement amounts. Most fiscal impacts are not available because of the variability of the work each year in the number of reported releases, the owner’s selection of a consultant, and the necessary cleanup work for each release.

B) Name and title of department head commenting on the fiscal impacts:
Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		

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
Official Title of Materials Incorporated (from title page)	Cost Guidelines for Underground Storage Tank Sites
Publisher	State of Utah/DEQ/DERR
Date Issued	June 3, 2021
Issue, or version	

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*)**:**	
	First Removal
Official Title of Materials Incorporated (from title page)	TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS
Publisher	State of Utah/DEQ/DERR
Date Issued	November 14, 2002
Issue, or version	

C) 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 Removal
Official Title of Materials Incorporated (from title page)	UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES
Publisher	State of Utah/DEQ/DERR
Date Issued	November 14, 2002
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

B) A public hearing (optional) will be held:		
On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

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.			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.
R311-207-1. Definitions.

Definitions are found in Section R311-200.

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

(1) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund [~~shall~~]must:

(a) have previously satisfied the requirements of [~~Section~~]Subsection R311-206-3([~~a~~]1)[~~,~~];

(b) have a valid certificate of compliance at the time of product release by the covered UST; and

(c) meet the requirements of Section 19-6-424.

(2) Except as provided in [~~Section~~]Subsection R311-207-2([~~c~~]3), a responsible party eligible to receive payments in accordance with Section 19-6-419 [~~shall~~]must submit to the [~~Director~~]director a written [~~Eligibility Application~~]eligibility application to make a claim against the [~~Petroleum Storage Tank Trust~~] Fund[~~,~~]:

(a) during a period for which that tank was covered by the [~~fund~~]Fund; [~~or~~]

(b) within one year after that [~~fund~~]Fund-covered tank is closed; [~~or~~]

(c) within six months after the end of the period during which the tank was covered by the [~~fund~~]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~~]director after July 1, 1994, the responsible party is required to expend the first $10,000 in eligible costs as determined by the [~~Director~~]director.

(4) For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first $25,000 in eligible costs as determined by the [~~Director~~]director.

([~~4~~]5) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in Subsection R311-207-2([~~b~~]2), shall constitute a claim against the [~~fund~~]Fund in accordance with Section 19-6-424.

([~~5~~]6) The responsible party's share of eligible costs [~~shall remain~~]remains the same, regardless of the number of responsible parties who are associated with a release and covered by the [~~fund~~]Fund.

(a) [~~Only~~]only one responsible party can claim against the fund per release in accordance with Section 19-6-419.

([~~6~~]7) When a facility has an open release and a subsequent [~~PST~~] Fund eligible release occurs at that facility, the [~~PST~~] Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable [~~by the Utah Underground Storage Tank Act~~]under Section 19-6-419.

(a) [~~Additional PST~~]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~~]the director shall determine the allowable coverage for a subsequent release.

(8) 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) When the [~~Director~~]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. [~~The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.~~]

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

(1) Upon making a claim for coverage under the [~~fund~~]Petroleum Storage Tank Trust Fund, and after receiving notice from the [~~Director~~]director of eligibility to claim against the [~~fund~~]Fund, the responsible party shall [~~respond to the compliance schedule~~]meet compliance time tables issued by the [~~Director~~]director [~~with work plans. The work plans may address three phases of the compliance schedule as determined by the Director:~~

~~(a) tasks required to bring the site under control;~~

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

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

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

(2) For allowable costs to b e 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 Subsections R311-207-4(8).

(ii) budgets must include proposed costs in an itemized format as described in Subsection R311-207-4(1) through R311-207-4(5).

(3) Prior to performing work eligible for reimbursement by the Fund, [~~The~~]the consultant must have a Statement of Qualification approved by the [~~Director~~]director.

(a) [~~The~~]the initial Statement of Qualification submittal shall include information about the qualifications of all certified UST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans.

(b) [~~The~~]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.

([~~b~~]c) [~~The~~]the Statement of Qualification [~~shall~~]must be updated annually in January, and shall be approved by the [~~Director~~]director for a period of one year.

(i) [~~The~~]the update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3([~~c~~]3)([~~1~~]a)[~~(B)~~] and R311-207-3(3)(b)[~~(C)~~].

(4) [~~The work plan shall~~]Work plans must include [~~information about the claimant's contract with~~]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 [~~in accordance with the work plans~~].

(a) [~~That~~] information provided on that form shall demonstrate that the claimant's contract has met the following requirements [~~have been met, as determined by the Director~~]:

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

([~~b~~]ii) [~~The~~]the contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

([~~c~~]iii) [~~The~~]the consultant shall have no cause of action against the state for payment;

([~~d~~]iv) [~~The~~]the contract will specify a subcontracting method consistent with the requirements of R311-207;

([~~e~~]v) [~~The~~]the contract shall require, and include documentation that the consultant carries, the insurance specified in Subsection R311-207-3([~~e~~]3)([~~1~~]b)([~~C~~]iii)[~~.~~];

([~~f~~]vi) [~~Payment~~]payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

([~~g~~]vii) [~~The~~]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

([~~h~~]viii) [~~Any~~]any other requirements specified by the [~~Director~~]director.

(5) [~~The work plan~~]Work plans shall [~~include~~]address any additional [~~information required by~~]requirements outlined in 40 CFR 280.

(6) The [~~Director~~]director may waive specific requirements of [~~Section~~]Rule R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected.

(a) [~~The Director~~]the director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the [~~fund~~]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~~]director shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. [~~For costs to be covered by the fund, the Director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).~~]

(8) A request for time and material reimbursement from the Fund must be received by the [~~Director~~]director within one year from the date the included work was performed or reimbursement shall be denied.

(a) [~~If~~]if there are any deficiencies in the request, the claimant [~~shall have~~]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~~]if a release was initially denied eligibility and is subsequently found to be eligible[~~, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement.~~]:

(i) work conducted prior to 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~~]Fund must be received by the [~~Director~~]director within one year from the date of the "No Further Action" letter issued by the [~~Director~~]director or reimbursement shall be denied.

(a) [~~If~~]if a release is re-opened as provided for in the "No Further Action" letter, payments from the [~~fund~~]Fund may be resumed when approved by the [~~Director~~]director.

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

(a) the [~~Director~~]director [~~shall~~]must approve all work plans and associated budgets before the consultant initiates any work[,]; and

(b) the contract with the consultant shall comply with Subsections R311-207-3([~~d~~]4)[~~(1)(A), (3), (6), (7), and (8)~~].

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

(1) In order to receive payment from the [~~fund~~]Petroleum Storage Tank Trust Fund, a claimant [~~shall~~]must submit [~~an invoice~~]a request for reimbursement to the [~~Director~~]director.

(2) The [~~invoice from the claimant to the fund shall~~]request for reimbursement must be on the form [~~or forms~~] provided by the [~~Director~~]director.

(a) the form must be properly completed and signed by the claimant and include invoices and other appropriate documentation.

(3) Reimbursement [~~may~~]will be on a [~~pay for performance or on a~~] time and material basis as approved in advance by the [~~Director~~]director.

(4) All costs for time and material reimbursement [~~shall~~]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~~]director.

([~~2~~]5) All itemized expenses [~~shall~~]must indicate the full name and address of the company or contractor providing materials or performing services.

([~~3~~]6) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the [~~Director~~]director, with a copy of the original bill provided to the [~~Director~~]director by the claimant.

(a) [~~The~~]the claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with [~~Sections~~]Section R311-207-5 and Subsections R311-207-4([~~c~~]8).

([~~4~~]7) For time and material [~~based~~] reimbursement, before receiving payment under Section 19-6-419, the claimant [~~shall~~]must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the [~~Director~~]director, unless the [~~Director~~]director has agreed to other arrangements.

(a) [~~The~~]the responsible party [~~shall remain~~]remains primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

([~~5~~]8) For time and material [~~based~~] reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor [~~shall~~]must include one or more of the following items:

(a) a minimum of three competitive bids by responsive bidders. [~~To~~]For a bid to be competitive:

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

(ii) bids must be submitted on the appropriate standardized Bid Summary form in accordance with the Cost Guidelines;

([~~ii~~]iii) [~~The~~]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~~]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.

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

(b) sole source justification; or

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

~~(c) documentation that expenses have been for reasonable, customary, and legitimate purposes; or~~]

([~~d~~]c) other documentation as required or requested by the [~~Director~~]director to document expenses are reasonable, customary, and legitimate.

([~~6~~]9) In accordance with Section 19-6-420, the [~~Director~~]director may not authorize payment from the [~~fund~~]Fund for services provided by consultants, contractors, or subcontractors which are [~~in non-compliance~~]not in compliance with the requirements of [~~Section~~]Rule R311-207 or any other applicable federal, state, or local law.

([~~7~~]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~~]director.

[~~(8) The Director may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Director. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Director.~~]

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

(1) Costs claimed by the claimant in accordance with [~~Section~~]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~~]director.

(2) The [~~Director~~]director may determine the amount of [~~fund~~]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, 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[~~, or~~];

(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.

[~~(2) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.~~

~~(3) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES as revised November 14, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.~~]

(4) If a claim that does not comply with the requirements of Rule R311-207 or the Cost Guidelines is returned by the [~~Director~~]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 [~~Petroleum Storage Tank Trust~~] Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the [~~Director~~]director.

(a) [~~The~~]the rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates [~~in the rate schedule approved by the Director~~] and the materials at cost to the consultant. Material costs shall include:

(i) adjustments for all available discounts[~~,~~];

(ii) refunds[~~,~~];

(iii) rebates [~~and~~];

(iv) allowances which the consultant reasonably should take under the circumstances[~~,~~]; and [~~for~~]

(v) credits for proceeds the consultant received or should have received from salvage and material returned to suppliers.

(b) [~~In~~]in no event shall the price paid by the [~~Petroleum Storage Tank Trust~~] Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source.

(c) [~~The~~]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~~]director. [~~No reimbursement shall be made for undocumented labor hours and costs.~~]

(d) [~~No~~]no reimbursement [~~shall~~]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~~]state makes a payment from the Petroleum Storage Tank Trust Fund, the [~~State shall have~~]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~~]the claimant who receives payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the [~~State's~~]state's rights and do nothing to prejudice them.

R311-207-7. Consultant [~~Labor Codes, Titles, Duties and Fee Schedules~~]Personnel Classifications, Requirements, Rates, Tasks, and Responsibilities.

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

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

~~(3) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Director shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Director shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates. If they do exceed the allowable range, the firm shall then resubmit a revised fee schedule that is within the allowable range. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.~~

~~(4) The Director may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(c). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(c).~~

~~(5) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(c) for the categories for which that consultant provides services will be calculated.~~

~~If the average of the consultant's fees is lower than this average, the Director may approve all of the fees as proposed.~~

~~(6) The Director may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Director reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Director.~~

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

~~(8) A claimant or consultant may overcome the presumption that a fee is unreasonable by presenting clear and concise evidence to the Director that the fees are reasonable and customary. Excessive overhead factors will not meet this test.~~

~~(9) The Director may determine the amount of fund monies that will be reimbursed to a claimant for commonly performed tasks. The amount of fund monies that will be reimbursed for a particular task, item or activity may be established by R311-207-7(c), competitive bid, market survey or other applicable method as determined by the Director. Public comment will be taken before proposed reimbursement rates are adopted.~~]

(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([~~5~~]7)(a), [~~yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed,~~] the [~~Director~~]director may utilize budget projections to allocate coverage available for the payment of third party claims prior to a determination that corrective action has been properly performed and completed.

(a) [~~The Director~~]the director may amend budget projections as frequently as [~~he deems~~]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~~]State Risk Manager has approved the settlement.

(3) Apportionment and priority shall be based [~~upon~~]on the order in which an approved and agreed upon claim is received by the [~~Director~~]director.

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

(1) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(e) [~~shall~~]must:

(a) have an approved [~~PST~~]Petroleum Storage Tank Trust Fund Statement of Qualification in accordance with Subsection R311-207-3([~~c~~]3)[~~,~~]; and

(b) [~~have approved PST Trust Fund~~]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~~]the designation shall be made in writing to the [~~Director~~]director.

(3) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):

(a) all work plans and budgets [~~shall~~]must be pre-approved by the [~~Director~~]director in accordance with Subsection R311-207-3([~~j~~]10);

(b) the consultant [~~shall~~]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([~~h~~]8) and R311-207-3([~~i~~]9).

KEY: financial responsibility, petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: October 17, 2011
Notice of Continuation: March 27, 2017
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 May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R-311-208**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tank Penalty Guidance.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Minor change to combine two sentences in order to clarify intent.

4. Summary of the new rule or change:

R311-208-5(2)(b)(i) Change “Good faith takes into account” to “taking into account”. Just combines two sentences to clarify intent.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

B) Local governments:

This rule change is not expected to have any fiscal impacts on local governments revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because all proposed changes are just minor corrections and clarifications and doesn't change the business practices of any of the affected parties.

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 businesses revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties

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 individuals' revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

F) Compliance costs for affected persons:

No compliance costs are anticipated.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, "The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis."

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are just minor corrections and clarifications

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

19-6-105		
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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-208. Underground Storage Tank Penalty Guidance.
R311-208-1. Definitions.

Definitions are found in Rule R311-200.

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

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

(2) The procedures in Rule R311-208 are intended solely for the guidance of the [~~Director~~]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 [~~is~~]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~~]director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in [~~Section~~]Subsection 19-1-102(3):

(a) [~~Payment~~]payment of the penalty may be extended based on a person's inability to pay[~~.~~];

(i) [~~This~~]this should be distinguished from a person's unwillingness to pay.

(ii) [~~In~~]in cases of financial hardship, the [~~Director~~] director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(b) [~~Without~~]without regard to financial hardship, the [~~Director~~]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.~~]director; or

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

(i) [~~The~~]the project must be in addition to all regulatory compliance obligations;

(ii) [~~The~~]the project preferably should closely address the environmental effects of the violation;

(iii) [~~The~~]the actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(iv) [~~The~~]the project must primarily benefit the environment rather than benefit the violator;

(v) [~~The~~]the project must be judicially enforceable; and

(vi) [~~The~~]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~~]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~~]a facility's certificate of compliance recently lapsed and product has been delivered[~~.~~]; or

(b) [~~A~~]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~~]director.

(2) The [~~Director~~]director may assess a penalty against each violator involved in an illegal delivery occurrence.

(a) [~~If~~]if a violator is operating as [~~an owner/operator and deliverer~~]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~~]director.

(a) [~~Nonetheless~~]nonetheless, the [~~Director~~]director may enter a stipulated penalty agreement with the violator.

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

(a) [~~Economic~~]economic benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(b) [~~Gravity~~]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) [~~The~~] degree of cooperation or noncooperation and good faith efforts to comply[~~. Good faith takes into account~~], taking into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the [~~State~~]state;

(ii) [~~The~~] willfulness or negligence of the violation;

(iii) [~~The~~] history of compliance or noncompliance; and

(iv) [~~Other~~]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~~]environmental sensitivity. The actual impact of the violation(s) that occurred.

(d) [~~The~~] number of days of noncompliance.

(e) [~~Response~~]response and investigation costs incurred by the State and others.

(f) [~~The~~]the possible deterrent effect of a penalty to prevent future violations.

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

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

(a) Major Violations: $5,000 to $10,000 per violation.

(i) [~~This~~]this category includes major deviations from the requirements of the rules or [~~Act~~]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~~]this category includes moderate deviations from the requirements of the rules or [~~Act~~]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~~]this category includes slight deviations from the rules or [~~Act~~]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~~]director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance Section to R311-208-5.

KEY: penalties, petroleum, underground storage tanks[~~*~~]
Date of Enactment or Last Substantive Amendment: September 16, 1996
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R-311-209**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Underground Storage Tanks: Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

4. Summary of the new rule or change:

R311-209-2(1) Remove language specifying release requirement pertaining to regulated UST. Statute change according to 19-6-405.7 allows funds to be used to conducted investigation of suspected releases.

Updating rule references.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because it is updating language, punctuation, capitalization and structure.

B) Local governments:

This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because it is updating language, punctuation, capitalization and structure.

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

This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because it is updating language, punctuation, capitalization and structure.

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 businesses revenues or expenditures because it is updating language, punctuation, capitalization and structure.

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 it is updating language, punctuation, capitalization and structure.

F) Compliance costs for affected persons:

Updates did not change any compliance costs for affected persons.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, “The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis.”

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These changes are updates to the rule references, punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not change the essence of the rule.

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

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
Official Title of Materials Incorporated (from title page)	
Publisher	

Date Issued	
Issue, or version	

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

10. This rule change MAY become effective on (mm/dd/yyyy)**:**	10/22/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.
R311-209-1. Definitions.

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

R311-209-2. Use of [~~the~~] State Cleanup Appropriation.

(1) The [~~Director~~]director shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and [~~the State Cleanup Appropriation~~]state cleanup appropriations, as authorized by [~~Sections~~]Section 19-6-405.7[~~, 19-6-409(5)~~] and Subsection 19-6-424.5(9) respectively, when:

[~~(1) The release is from a regulated UST,~~]

([~~2~~]a) [~~The owner or operator~~]the release is not fully covered by the [~~Petroleum Storage Tank Trust Fund,~~]Environmental Assurance Program;

([~~3~~]b) [~~The~~]the release is a direct or potential threat to human health or the environment[~~,~~]; and

([~~4~~]c) [~~The~~]the owner or operator is unknown, unable, or unwilling to bring the site under control or remediate the site to achieve the clean-up goals as described in [~~Section~~]Rule R311-211[~~,~~]; or

([~~5~~]d) [~~Other~~]other relevant factors are evident as determined by the [~~Director~~]director.

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

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

([~~1~~]a) [~~The~~] immediate or direct threat to public health or the environment[~~,~~];

([~~2~~]b) [~~The~~] potential threat to public health or the environment[~~,~~];

([~~3~~]c) [~~The~~] economic consideration and cost effectiveness of the action[~~,~~]; and

([~~4~~]d) [~~The~~] technology available[~~,~~]; or

([~~5~~]e) [~~Other~~]other relevant factors as determined by the [~~Director~~]director.

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

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

(a) [~~The~~]the responsible party's ability to pay; and

(b) [~~Any~~]any other relevant factors the [~~Director~~]director determines to be appropriate.

(2) At any time before or after the [~~Director~~]director initiates collection of management and oversight expenses, the responsible party may apply [~~to the Director~~] for an exemption from paying these expenses.

(a) [~~The~~]the responsible party shall furnish all documentation and information in the form and manner as prescribed by the [~~Director~~]director in support of the application.

(b) [~~The Director~~]the director, in [~~his~~]their sole discretion, may grant an exemption based on the responsible party's application in consideration of the factors listed in Subsection R311-209-4([~~a~~]1).

KEY: petroleum, underground storage tanks
Date of Enactment or Last Substantive Amendment: October 10, 2014
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-409; 19-6-420

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _X_; Repeal ___; Repeal and Reenact ___		
	Title No. - Rule No. - Section No.	
Utah Admin. Code Ref (R no.):	**R-311-212**	**Filing No. (Office Use Only)**
Changed to Admin. Code Ref. (R no.):	**R**	

Agency Information

1. Department:	Utah Department of Environmental Quality	
Agency:	Utah Division of Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state, zip:	Salt Lake City, Utah 54114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Wilson	385-251-0893	djwilson@utah.gov
Lauran Ortman	801-536-4177	lortman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Administration of the Petroleum Storage Tank Loan Program.

3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?)**:**

Change “Petroleum Storage Tank Trust Fund” to just “Fund” which is consistent to what is in the Underground Storage Tanks: Definitions. Clarifying the meaning of replacing USTs by adding the word petroleum to match the statute.

4. Summary of the new rule or change:

R311-212-2(4). Delete “Petroleum Storage Tank Trust” and refer to it as just “Fund” because Fund is defined in R311-200-1(b)(36) as Petroleum Storage Tank Trust. Changing “Underground Storage Tank” to “UST”.

R311-212-3(4). Clarifying that the replacement refers to Installing and replacing “petroleum” USTs. Change made so that the rule matches the statute.

All other changes are just updating punctuation, capitalization, structure and word selection to better reflect rule writing standards recommended by the Office of Administrative Rules. These changes do not alter the essence of the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

B) Local governments:

This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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

This rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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 businesses revenues or expenditures because all proposed changes are just minor corrections and clarifications and do not change the business practices of any of the affected parties.

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 individuals' revenues or expenditures because all proposed changes are just minor corrections and clarifications.

F) Compliance costs for affected persons:

No compliance costs are anticipated because all proposed changes are just minor corrections and clarifications.

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	**FY2021**	**FY2022**	**FY2023**
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			
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 approval of regulatory impact analysis:

The head of the department of environmental quality, Kim Shelly, has reviewed and approved this fiscal analysis.

Include Department head sign-off here. This is separate from the Department Head Comments and should be a simple statement such as, "The head of department of X, Jo Smith, has reviewed and approved this fiscal analysis."

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are just minor corrections and clarifications.

B) Name and title of department head commenting on the fiscal impacts:

Kim Shelley, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

19-6-105		
19-6-403		
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*)**:**

	First Incorporation

Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy)**:**	08/02/2021

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

On (mm/dd/yyyy)**:**	**At** (hh:mm AM/PM)**:**	**At** (place)**:**

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

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

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.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	**Date** (mm/dd/yyyy)**:**	

R311. Environmental Quality, Environmental Response and Remediation.
R311-212. Administration of the Petroleum Storage Tank Loan Program.
R311-212-1. Definitions.

Definitions are found in Rule R311-200.

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

(1) Application for a loan [~~shall~~]must be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9).

(a) [~~Loan~~]loan applications [~~shall~~]will be accepted during application periods designated by the [~~Director~~]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 [~~twenty-five per cent~~]25% of the cash balance of the Petroleum Storage Tank Trust Fund[~~,~~]; and

(b) the cash balance of the [~~Petroleum Storage Tank Trust~~] Fund exceeds $10,000,000.

(3) If the requirements of Subsections R311-212-2([~~b~~]2)([~~1~~]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~~]director may designate an application period.

(4) An open application period will close if:

(a) the current balance due for all outstanding loans exceeds [~~twenty-five per cent~~]25% of the cash balance of the [~~Petroleum Storage Tank Trust~~] Fund[~~,~~]; or

(b) the cash balance of the [~~Petroleum Storage Tank Trust~~] Fund is less than $10,000,000.

(5) If an open application period closes as required by Subsection R311-212-2([~~d~~]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([~~a~~]1).

(6) Applications must be received by the [~~Director~~]director by 5:00 p.m. on the last day of the application period.

(7) Loan applications received outside the application period [~~shall~~]will be invalid.

R311-212-3. Eligibility Review.

(1) The [~~Director~~]director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5)[~~, 19-6-409(6), 19-6-409(7), and~~]through 19-6-409(8).

(2) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must, for all 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 all requirements for remediation of facilities with leaking [~~underground storage tanks~~]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 all facilities owned or operated by the applicant for which the applicant does not request a loan:

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

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

(c) [~~The~~]the applicant has paid all [~~underground storage tank~~]UST registration fees, interest and penalties which have been assessed; and

(d) [~~The~~]the applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(4) To meet the requirements of [~~Section~~]Subsection 19-6-409(5), the loan request must be for the purpose of:

(a) [~~Upgrading~~]upgrading petroleum USTs;

(b) replacing petroleum USTs; or

(c) [~~Permanently~~]permanently closing USTs.

(5) [~~If~~]if an applicant requests a loan for closing USTs which will be replaced by above[~~-~~]ground storage tanks, the loan, if approved, will be only for closing the USTs.

(a) [~~The~~]the security pledged by the applicant for a loan to replace USTs with above[~~-~~]ground storage tanks [~~shall~~]will be subject to the limitations in R311-212-6.

R311-212-4. Prioritization of Loan Applications.

(1) When determined by the [~~Director~~]director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned.

(a) [~~Ten~~]ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

([~~a~~]i) [~~The~~]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.

([~~b~~]ii) [~~The~~]the applicant's income is derived solely from operations at UST facilities.

([~~c~~]iii) [~~The~~]the applicant owns or operates no more than two facilities.

([~~d~~]iv) [~~The~~]the facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

([~~e~~]v) [~~There~~]there are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

([~~f~~]vi) [~~Loan~~]loan proceeds will be used solely for replacing or upgrading petroleum USTs.

([~~g~~]vii) [~~All~~]all USTs at the facility are greater than 15 years old.

([~~2~~]b) [~~One~~]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.

([~~3~~]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~~]director by any other method.

([~~4~~]3) Applications shall remain in priority order regardless of availability of funds until a new application period is declared.

(a) [~~When~~]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~~]the completed application with supporting documents [~~shall~~]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.

([~~2~~]3) All 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 [~~shall be the responsibility of and paid for by the applicant~~].

(i) [~~The Director~~]the director may require payment of costs in advance.

(ii) [~~The Director~~]the director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

([~~3~~]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.

([~~4~~]5) The applicant must close the loan within 30 days after the [~~Director~~]director conveys the loan documents for the applicant's signature.

(a) [~~If~~]if the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply.

(b) [~~An~~]an exception to the 30-day period may be granted by the [~~Director~~]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~~]the loan amount may not be greater than 80[~~percent~~]% of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position[~~,~~]; or

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

(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~~]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~~]director by a title company or appropriate professional person approved by the [~~Director~~]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 Department shall~~]the director will accept no less than a second mortgage position on real property pledged for loan security.

(5) Whenever 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) Above[~~—~~]ground storage tanks and real property on which they are located [~~shall~~]will not be acceptable as security.

(8) [~~Underground storage tanks~~]USTs and the real property on which they are located [~~shall~~]will not be acceptable as security unless:

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

(b) [~~The~~]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.

([~~i~~]9) If a loan is made without security, the maximum loan repayment period [~~shall~~]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~~]director.

(2) The [~~Director~~]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~~]the initial disbursement shall be for the lesser of 40[~~—per cent~~]% of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done.

(b) [~~Disbursement~~]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~~]director.

([~~a~~]i) [~~If~~]if an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement.

(ii) [~~Disbursement~~]disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the [~~Director~~]director, following the initial disbursement.

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

(3) Loan proceeds [~~shall~~]may not be used to pay [~~underground storage tank~~]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~~]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.

([~~2~~]a) [~~The~~]the initial installment payment shall be due on a date established by the [~~Director~~]director.

(b) [~~Subsequent~~]subsequent installment payments shall be due on the first day of each month.

(i) [~~A~~]a notice of payment and due date shall be sent for each subsequent payment.

(c) [~~Non-receipt~~]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~~]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[~~-percent~~]% of the payment due.

(a) [~~The~~]the penalty shall be assessed and payable on payments received by the [~~Director~~]director more than five days after the due date.

(b) [~~A~~]a penalty shall be assessed only once on a given late payment.

(7) Payments [~~shall be~~]are considered received the day of the U.S. Postal Service post[~~—~~]mark date or [~~receipted~~]receipt date for payments delivered to the [~~Director~~]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.

([~~7~~]9) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

([~~8~~]10) Releases of the [~~Director's~~]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~~]Fund lapses[~~,~~]; or

(c) if the certificate of compliance lapses or is revoked.

(2) Lapsing under Subsection R311-206-7([~~e~~]5) [~~shall~~]will not be considered as grounds for default for USTs which are permanently closed.

([~~2~~]3) The [~~Director~~]director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

([~~3~~]4) The [~~Director~~]director need not give notice of default prior to declaring the full amount due and payable.

([~~4~~]5) The borrower [~~shall be~~]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, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the [~~Director~~]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~~]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~~]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 Enactment or Last Substantive Amendment: January 1, 2017
Notice of Continuation: March 27, 2017
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409

UST and LUST Performance Measures Definitions
As of October 2018

EPA collects data about federally-regulated underground storage tanks (USTs) from state UST and leaking UST (LUST) programs based on EPA performance measures. The table of contents below lists the UST and LUST performance measures; indicates the status of the measures – whether they are added, updated, retired, phasing out, or unchanged – and shows the page number for each. Nine measures added October 1, 2018 or later are highlighted in yellow; two measures retired effective October 1, 2018 are grayed out. The performance measures and entire definitions are provided on subsequent pages.

Contents

UST Universe Performance Measures

UST-1. Total Number of Petroleum UST Systems (Updated: October 1, 2018): The number of active Subtitle I regulated petroleum UST systems registered with the state added to the cumulative number of closed petroleum UST systems. This measure does not include exempt or excluded UST systems. The count should include those systems that were previously deferred under the 1988 regulation, but are now considered regulated UST systems under the 2015 UST regulation.

UST-2. Number of Closed Petroleum UST Systems (Updated: October 1, 2018): The cumulative number of Subtitle I regulated petroleum UST systems that have been reported to the state as being closed permanently (according to the closure provisions in 40 CFR Part 280, Subpart G) which are either left in the ground (in-situ closures) or removed from the ground. This measure includes facilities where UST systems have been replaced. This measure does not include exempt or excluded UST systems. After October 1, 2018, this measure includes new tank closures for systems that were previously deferred under the 1988 regulation but are now considered regulated UST systems under the 2015 UST regulation. Do not report temporary closures. If petroleum contamination is found during closure, the facility is counted under both the "Closed Petroleum UST Systems" and "Confirmed Releases" categories.

UST-3. Total Number of Hazardous Substance UST Systems (Updated: October 1, 2018): The cumulative number of active and closed (according to the closure provisions in 40 CFR Part 280, Subpart G) combined Subtitle I regulated hazardous substance UST systems. This measure does not include exempt or excluded UST systems. The count should include those systems that were previously deferred under the 1988 regulation but are now considered regulated UST systems under the 2015 UST regulation.

UST-3a. Number of Closed Hazardous Substance UST Systems (Added: October 1, 2018): The cumulative number of Subtitle I regulated hazardous substance UST systems that have been reported to the state as being closed permanently (according to the closure provisions in 40 CFR Part 280, Subpart G) which are either left in the ground (in-situ closures) or removed from the ground. This measure includes facilities where UST systems have been replaced. This measure does not include exempt or excluded UST systems. Do not report temporary closures.

UST Significant Operational Compliance (SOC) Performance Measures

UST-4. Percentage of UST Facilities in Significant Operational Compliance with UST Spill, Overfill, and Corrosion Protection Requirements (Updated: March 26, 2003; Phasing out as states implement 2015 UST regulation): The percentage of UST facilities deemed to be in significant operational compliance with the UST spill, overfill, and corrosion protection requirements.

***Clarification**: Report either the SOC measures or the technical compliance rate measures in UST-9a-e, not both. When states reach all the applicable implementation dates for 2015 requirements, report using the technical compliance rate measures instead of SOC. This is a percentage, rather than a number, based on initial inspections at facilities during the last 12*

months. This measure applies to the spill, overfill, and corrosion protection requirements that were phased in through 12/22/1998. Reports should reflect the operational instead of equipped compliance. Compliance is reported on a facility basis rather than per tank; based on inspections conducted within the past 12 months; and based on an initial, instead of follow-up, inspection at a facility. Significant operational compliance generally means that UST systems at a facility have the proper equipment or procedures in place and are being properly operated and maintained in order to detect a release.

UST-5. Percentage of UST Facilities in Significant Operational Compliance with UST Leak Detection Requirements (Updated: March 26, 2003; Phasing out as states implement 2015 UST regulation): The percentage of UST facilities deemed to be in significant operational compliance with the UST leak detection requirements.

***Clarification**: Report either the SOC measures or the technical compliance rate measures in UST-9a-e, not both. When states reach all the applicable implementation dates for the 2015 requirements, report using the technical compliance rate measures instead of SOC. This is a percentage, rather than a number, based on initial inspections at facilities during the last 12 months. This measure applies to the leak detection requirements that were phased in through 1993. Reports should reflect the operational instead of equipped compliance. Compliance is reported on a facility basis rather than per tank; based on inspections conducted within the past 12 months; and based on an initial, instead of follow-up, inspection at a facility. Significant operational compliance generally means that UST systems at a facility have the proper equipment or procedures in place and are being properly operated and maintained in order to detect a release.*

UST-6. Percentage of UST Facilities in Significant Operational Compliance with UST Release Prevention (spill, overfill, and corrosion) and Detection Requirements (Updated: September 30, 2003; Phasing out as states implement 2015 UST regulation): The percentage of UST facilities deemed to be in significant operational compliance with both the UST spill, overfill, and corrosion protection requirements (UST-4) and the UST leak detection requirements (UST-5).

***Clarification:** Report either the SOC measures or the technical compliance rate measures in UST-9a-e, not both. When states reach all the applicable implementation dates for the 2015 requirements, report using the technical compliance rate measures instead of SOC. This is a percentage, rather than a number, of facilities in significant operational compliance with the measures above and is based on initial inspections at facilities during the last 12 months. In order to be in compliance with the combined measure, a facility must be in compliance with both the prevention and detection measures in the definition.*

UST Inspections Performance Measure

UST-7. Number of On-Site Energy Policy Act Inspections Conducted (Added: January 18, 2008): This is the number of on-site compliance inspections conducted at federally regulated UST facilities during the last six months. Each inspection must determine compliance with Subtitle I and 40 CFR Part 280 or the requirements of a state program approved under section 9004 of Subtitle I. At a minimum, each inspection must assess compliance with the core areas

outlined in EPA's inspection grant guideline at https://www.epa.gov/ust/inspecting-underground-storage-tanks-2005-energy-policy-act. An on-site inspection includes a review of all applicable records. However, the records review may be conducted off-site.

Clarification: *States should report inspections conducted by the state underground storage tank (UST) agency; other state agency, local agency, or contractor duly designated by the state to conduct UST inspections; or private inspectors as part of a third party inspection program that meets the requirements in EPA's Inspection Grant Guidelines. Regions should report inspections conducted by the region, contractors, or credentialed inspectors. Follow-up visits related to the initial on-site compliance inspection should not be counted as an additional compliance inspection; installation or closure inspections that do not assess compliance according to the Inspection Grant Guidelines should not be counted. An inspection is considered to take place on the date of the on-site inspection, even if it takes additional time after the on-site inspection to request and review records. Only report the number of inspections conducted during the reporting period.*

UST-8. Number of USTs (or UST Facilities) Identified as Being Ineligible for Delivery, Deposit, or Acceptance of Product (Retired: October 1, 2018).

UST Compliance Performance Measures Included In Technical Compliance Rate (TCR)

Note: When determining compliance for technical compliance rate performance measures, states and regions should refer to Technical Compliance Rate (TCR) Performance Measures at https://www.epa.gov/ust/technical-compliance-rate-tcr-performance-measures.

UST-9a. Percentage of UST Facilities in Compliance with 2015 Spill Prevention Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with the UST spill bucket requirements in the 2015 UST regulation.

Clarification: *This is a percentage, rather than a number, based on initial inspections at facilities during the last 12 months. This measure applies to the spill prevention requirements in the 2015 UST regulation, including the testing requirement for spill prevention equipment. States should report this measure on a facility basis rather than per tank; it is based on an initial, instead of follow-up, inspection at a facility.*

UST-9b. Percentage of UST Facilities in Compliance with 2015 Overfill Prevention Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with the UST overfill requirements in the 2015 UST regulation.

Clarification: *This is a percentage, rather than a number, based on initial inspections at facilities during the last 12 months. This measure applies to the overfill prevention requirements in the 2015 UST regulation, including the testing requirement for overfill prevention equipment. States should report this measure on a facility basis rather than per tank; it is based on an initial, instead of follow-up, inspection at a facility.*

UST-9c. Percentage of UST Facilities in Compliance with 2015 Corrosion Protection Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with the UST corrosion protection requirements in the 2015 UST regulation.

Clarification: *This is a percentage, rather than a number, based on initial inspections at facilities during the last 12 months. This measure covers the corrosion protection requirements in the 2015 UST regulation. States should report this measure on a facility basis rather than per tank; it is based on an initial, instead of follow-up, inspection at a facility.*

UST-9d. Percentage of UST Facilities in Compliance with 2015 Release Detection Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with the UST release detection requirements in the 2015 UST regulation.

Clarification*: This is a percentage, rather than a number, based on initial inspections at facilities during the last 12 months. This measure applies to the release detection requirements, including testing requirements in the 2015 UST regulation. States should report this measure on a facility basis rather than per tank; it is based on an initial, instead of follow-up, inspection at a facility.*

UST-9e. Technical Compliance Rate (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with the spill prevention requirements (UST-9a), overfill prevention requirements (UST-9b), corrosion protection requirements (UST-9c) and the release detection requirements (UST-9d).

Clarification*: This is a percentage, rather than a number, of facilities in compliance with components of the 2015 UST regulation covered in the measures above; it is based on initial inspections at facilities during the last 12 months. In order to be in compliance with this combined measure, a facility must be in compliance with all of the measures listed in the definition.*

UST Compliance Performance Measures Not Included In Technical Compliance Rate (TCR)

Note: When determining compliance for the remaining UST compliance performance measures, states and regions should refer to Technical Compliance Rate (TCR) Performance Measures at https://www.epa.gov/ust/technical-compliance-rate-tcr-performance-measures.

UST-10. Percentage of UST Facilities in Compliance with Energy Policy Act Operator Training Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with class A and B designated operator training requirements.

Clarification*: This measure is a percentage, rather than a number, of facilities in compliance with training requirements for class A and B designated operators over the past 12 months. This measure includes initial training and any retraining requirements set by a state. The measure is evaluated during UST compliance inspections and is determined based on status at time of the initial inspection. At the time of inspection, if a state determines that retraining is warranted or*

required, this is not considered a failure to meet operator training requirements or this performance measure.

UST-11. Percentage of UST Facilities in Compliance with Financial Responsibility Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with financial responsibility (FR) requirements.

Clarification: *This measure is a percentage, rather than a number, of the facilities evaluated for compliance with financial responsibility requirements over the past 12 months and are deemed to be in compliance with FR requirements. Determination must cover both third party liability and cleanup. Unlike other compliance measures, compliance may be determined either at the time of inspection, even when submitted to a state in follow up to an inspection, or according to generally annually scheduled FR submissions required by a state. Inspectors should determine compliance based on FR status at the time of inspection, if evaluated on-site, or based on the first submission received by a state. If a state works with an owner and owner to come into compliance with FR later, this facility is still out of compliance for purposes of reporting the FR measure.*

UST-12. Percentage of UST Facilities in Compliance with 2015 Walkthrough Requirements (Added: October 13, 2018): The percentage of UST facilities deemed to be in compliance with the walkthrough requirements in the 2015 regulation.

Clarification: *This measure is a percentage, rather than a number, of facilities in compliance with 2015 UST regulation walkthrough requirements over the last 12 months. This measure covers required monthly and annual walkthrough requirements, as well as record retention. States should report this measure on a facility basis rather than per tank; it is based on an initial, instead of follow-up, inspection at a facility.*

LUST Performance Measures

LUST-1. Number of Confirmed Releases (Updated: March 26, 2003): The cumulative number of incidents, not UST systems, where an owner or operator identified a release from a Subtitle I regulated petroleum UST system; reported the release to the state, local, or other designated implementing agency; and the state or local implementing agency verified the release. Verification must be according to state procedures such as a site visit, including state contractors; phone call; follow-up letter; or other reasonable mechanism that confirmed the release.

Clarification*: "Confirmed Releases" is a cumulative category; releases should never be deleted from this category. Even when a cleanup is initiated and completed, the release remains in the "Confirmed Releases" category. For a site undergoing UST closure activities, a confirmed release is counted only if petroleum contamination is discovered and verified. In that case, the release is counted under both the "Confirmed Releases" and "Closed Petroleum UST Systems" categories. Even if a release achieves no further action as determined by the implementing agency, you should still count it as a confirmed release, as well as a cleanup initiated and cleanup completed.*

Example: *A confirmed release is identified by the incident, not by the receptors. For example, 10 contaminated residential wells are considered one release if the contamination was caused by a leaking tank at a single gasoline station. This accounting is true even if it is discovered that more than one tank at that station was leaking. If tanks at three gasoline stations are found to be leaking, then three confirmed releases are recorded, regardless of the number of receptors. Additionally, the initiation of a new cleanup response indicates a separate confirmed release. The discovery of a leaking tank at a gasoline station, for example, two years after completion of the original cleanup is classified as a new confirmed release.*

LUST-2(a-d). Number of Cleanups Initiated (Updated: March 26, 2003): The cumulative number of confirmed releases where a state, region or responsible party under supervision as designated by a state or region has evaluated the site and initiated:

- management of petroleum-contaminated soil,
- removal of free product from the surface or subsurface environment,
- management or treatment of dissolved petroleum contamination,
- monitoring of the groundwater or soil being remediated by natural attenuation, or
- a state has determined that no further actions are currently necessary to protect human health and the environment.

This is a subset of the LUST-1 measure and is subdivided into four different measures based on funding/lead for the cleanup. States only see LUST-2a and 2b in the database because LUST-2c and 2d are for EPA regions only.

- LUST-2a: Number of Cleanups Initiated (RP lead or state lead with state money)
- LUST-2b: Number of Cleanups Initiated (state lead with LUST Trust Fund money)
- LUST-2c: Number of Cleanups Initiated (region lead with LUST Trust Fund money)
- LUST-2d: Number of Cleanups Initiated (tribal lead with LUST Trust Fund money)

The number of cleanups initiated using any LUST Trust Fund money must be reported separately under LUST-2b, 2c, and 2d, depending on the lead. For example, if a state conducts cleanup activities using both state money and LUST Trust Fund money, report the cleanup initiated under LUST-2b.

Clarification: *"Cleanups Initiated" is a cumulative category; releases should never be deleted from this category. Even when a cleanup is progressing and completed, it remains in the "Cleanups Initiated" category. "Cleanups Initiated" indicates that physical activity, such as pumping, soil removal, recovery well installation, has begun at the site, unless a state has evaluated the site and determined that physical activity is currently unnecessary to protect human health and the environment, and the release achieves no further action. Site investigations and emergency responses do not qualify as a cleanup initiated unless one of the five actions listed in the definition has occurred. Releases being remediated by natural attenuation can be counted in this category when site characterization, monitoring plans, and site-specific cleanup goals are established for these releases. For cleanups completed under LUST-3a-d, there must have been a corresponding cleanup initiated under LUST-2a-d.*

LUST-3(a-d). Number of Cleanups Completed (Updated: March 26, 2003): The cumulative number of confirmed releases where cleanup has been initiated and where a state has determined that no further actions are currently necessary to protect human health and the environment. This

number includes releases in post-closure monitoring, as long as site-specific, that is risk-based, cleanup goals have been met. Releases using monitored natural attenuation must have completed site characterization, monitoring plans, and have established and met site-specific cleanup goals to be counted in this category.

This is a subset of the LUST-2 measure and is subdivided into four different measures based on funding/lead for the cleanup. States only see LUST-3a and 3b in the database because LUST-3c and 3d are for EPA regions only.

- LUST-3a: Number of Cleanups Completed (RP lead or state lead with state money)
- LUST-3b: Number of Cleanups Completed (state lead with LUST Trust Fund money)
- LUST-3c: Number of Cleanups Completed (region lead with LUST Trust Fund money)
- LUST-3d: Number of Cleanups Completed (tribal lead with LUST Trust Fund money).

The number of cleanups completed using any LUST Trust Fund money must be reported separately under LUST-3b, 3c, and 3d, depending on the lead. For example, if a state completes a cleanup using state money but also used LUST Trust Fund money during the course of the cleanup, report the cleanup completed under LUST-3b.

Clarification: *"Cleanups Completed" is a cumulative category; releases should never be deleted from this category. A state's no further action determination that satisfies the "Cleanups Initiated" measure above, also satisfies this "Cleanups Completed" measure. This determination allows a confirmed release that does not require further action to meet the definition of both an initiated and completed cleanup*

LUST-4. Number of Emergency Responses (Retired: October 1, 2018).

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE & REMEDIATION

Utah Petroleum Storage Tank Environmental Media Sampling Handbook

June 1, 2021

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Developed by the Department of Environmental Quality
Underground Storage Tank Branch

Table of Contents

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Terms and Definitions

Terms used in this document are defined in UAC R311-200 and in Section 19-6-402. Document specific terms and definitions are listed below:

- **COC** – Contaminants of Concern
- **DAQ** – Division of Air Quality
- **DERR** – Division of Environmental Response and Remediation
- **DOT** – Department of Transportation
- **FID –** Flame Ionization Detector
- **Field blank** – Any sample submitted from the field identified as a blank
- **Grab sample** – A single sample of soil or water taken without regard to time and flow and not combined with other samples
- **HASP** – Health and Safety Plan
- **Headspace** – the vapor mixture trapped above a solid or liquid in a sealed vessel
- **HS** – Hazardous Substance
- **ISL** – Initial Screening Levels
- **LEL** – Lower Explosive Limit
- **LUST** – Leaking Underground Storage Tank
- **MBTEXN** – MTBE, Benzene, Toluene, Ethylbenzene, Xylenes, Naphthalene
- **MCL** – Maximum Contaminant Level (Utah Admin. Code R311-211). A standard for drinking water established by the EPA under the Safe Drinking Water Act. The MCL is the maximum permissible level of a COC in water, which is used as a drinking water supply. MCLs are recognized statewide by the Divisions of Water Quality, Waste Management and Radiation Control, Drinking Water, and Environmental Response and Remediation
- **MTBE** – Methyl Tertiary-Butyl Ether
- **NAPL** – Non-Aqueous Phase Liquid. Also known as product, free product, floaters. This is free floating product on the water surface
- **NELAP –** National Environmental Laboratory Accreditation Program
- **O&G** - Oil and Grease
- **OVM –** Organic Vapor Monitor
- **PID** – Photoionization Detector
- **PPE** – Personal Protective Equipment
- **QA/QC** – Quality Assurance/Quality Control
- **Release** - means any spilling, leaking, discharging or disposing of regulated substance into surface waters, groundwater or soil
- **SCBA** – Self-Contained Breathing Apparatus
- **SSCL** – Site Specific Clean-up levels
- **SVE** – Soil Vapor Extraction
- **SVOC** – Semi-Volatile Organic Compound
- **Tier 1 SL –** Tier 1 Screening Level
- **TOC** – Total Organic Carbon
- **TOX** – Total Organic Halides
- **TPH** - Total Petroleum Hydrocarbons

- **TRPH** - Total Recoverable Petroleum Hydrocarbons
- **Trip blank -** a sample prepared by the lab or sampler prior to the field work using actual containers that are kept with the investigative samples throughout the event. They are packaged for shipment with the other samples and sent for analysis.
- **USC** - Unified Soil Classification means soil samples evaluated for soil type in accordance with ASTM D2488 Standard Practice for Description and Identification of Soils or DERR USC guidelines which allow any geotechnical method that defines soil types
- **UST** – Underground Storage Tank **Vadose zone -** the zone between land surface and the water table within which the moisture content is less than saturation (except in the capillary fringe) and pressure is less than atmospheric. Soil pore spaces also typically contain air or other gases. The capillary fringe is included in the vadose zone
- **VOC** - Volatile Organic Compounds

Rules and Regulations

40CFR 280 – Federal Regulation that pertains to Underground Storage Tanks (USTs) UAC R311 - Utah rules that describe how the Division of Environmental Response and Remediation (DERR) administers the UST program UCA19-6-401-429 - Utah UST Act

What are USTs?

An UST is a tank system, including piping connected to the tank, that has at least 10 percent of its volume underground. Federal and state regulations apply only to those USTs containing petroleum products or certain hazardous chemicals.

USTs that are not regulated by the DERR:

- Farm or residential tanks 1,100 gallons or less, used non-commercially.
- Tanks storing heating oil used on the premises.
- Flow-through process tanks.
- Emergency spill and overflow tanks.
- Tanks holding 110 gallons or less.
- Tanks containing hazardous waste.

Certification Requirements

Any person conducting environmental media sampling to determine levels of contamination which may have occurred from regulated USTs must be certified by the DERR (R311-201).

Training

Training topics must include:

- Chain of custody.
- Decontamination.
- U.S. Environmental Protection Agency (EPA) testing methods.
- Groundwater, soil, and air sampling protocols.
- Preservation of samples during transportation.
  Coordination with National Environmental Laboratory Accreditation
  .Program (NELAP) certified labs.
- State and Federal statutes, rules, and regulations.

Examination

An applicant must successfully pass a certification examination. Examinations are given at the DERR office.

Fees

All applicable fees must be paid prior to certification.

Initial Certification Requirements:

- Application and fees.
  Proof of training.
- Proof of citizenship.
- Pass the certification examination.

Renewal Requirements:

- Renew every 2 years.
- Application and fees.
- Pass the certification examination.

Reciprocity

If the Division Director determines that another state's certification program is equivalent to the certification program provided in R31-201, they may issue a Utah certification. The application, certification fees, and citizenship requirements still apply.

Certified Sampler Standards of Performance

The certified sampler:

- Must display the certificate upon request.
- Must comply with all local, state and federal laws and regulations regarding USTs.
- Must report the discovery of any release caused by or encountered in the course of Performing tank handling to the local health district, local public safety office and the DERR within twenty-four hours.
- Must not participate in fraudulent, unethical, deceitful or dishonest activity with respect to USTs.
- Must not participate in any other regulated certification program activities without meeting all requirements of that certification program.

NOTE: For violations of the standards of performance as outlined in R311-201 a sampler could be fined civil penalties of up to $10,000 per violation per day. See R311-201-6.

Introduction to Environmental Sampling

The primary goal of the UST Branch sampling program is the identification and quantification of Hazardous Substance (HS) or petroleum compounds and derivatives from regulated tanks. Proper quantification of these regulated substances is necessary to identify leaking tanks and the release of HS or petroleum compounds that may threaten human health and the environment.

Sampling for regulated substances may be necessary in a variety of media. Water sampling, including groundwater and surface water, and soil sampling will account for most of the sampling to be conducted. As conditions exist, environmental sampling may also need to be conducted in other matrices which include air, sludge, and free product.

Proper sampling protocol requires all sampling to be conducted by a certified sampler and a chain-of-custody to be maintained from sample collection to final analysis. Sample locations may vary depending on intended use of data. Sample locations associated with tank closure are dictated by the State Site Assessment Protocol found in R311-205-2 (https://rules.utah.gov/publicat/code/r311/r311-205.htm). The DERR project manager should be consulted in the location of samples for subsurface investigations and for confirmation samples associated with corrective action.

Parameters for which each sample will be analyzed depend upon the individual project objectives. A number of analytical parameters may be necessary to evaluate different sources of contamination to meet the UST program objectives. These parameters include analysis for petroleum products or petroleum derivatives, HS compounds defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (Section 101(14)) and any known intermediate breakdown of products or compounds above. It may also be necessary to measure Total Organic Halides (TOX), Total Organic Carbon (TOC), Oil and Grease (O&G), and any other waste analysis as determined by permitted treatment and disposal facilities.

This document is only provided as a condensed summary of protocols and procedures and is not meant to replace any other applicable state or federal rule, regulation, or safety practice commonly used by the environmental industry or regulatory agencies.

Quality Assurance/ Quality Control (QA/QC)

The objective of QA/QC in sampling is to produce data that is accurate, representative, credible, and defensible in a court of law. Proper QA/QC includes, as applicable:

- Duplicates.
- Blanks.
- Split samples.

- Sampling must be conducted in a manner that minimizes loss of volatile organic compounds.
- Samples should have zero headspace.
- Samples should be preserved at 4℃ (39.2°F) immediately after sampling and maintained
- At that temperature until received by the lab.

Proper QA/QC for the specific environmental media sampled is addressed in the following protocols. See Appendix A and Appendix B for additional information.

Chain-of-Custody

The chain-of-custody form is used to track the possession of a sample from the time it is collected until the time it is analyzed. The individual in custody of the sample must remain in direct control of its security until it is released to the next chain-of-custody recipient or to the analytical laboratory. The chain-of-custody form must include:

- Sample identification number.
- Date and time of collection.
- Place of collection (borehole, well number, etc.).
- Type of material (soil, water, air, etc.).
- Sample container type (VOA vial, 1-liter bottle, etc.).
- Preservation method (acidified, cooled, etc.).
- Signature and printed name and company of the sample collector.
- Signatures and printed names and dates/times of persons involved in the transportation and handling of the sample.

UST Closure Protocol

Introduction

There are two types of UST closures: temporary or permanent. All regulated USTs must meet state and federal regulations or must be permanently closed. Regulated USTs that meet state and federal regulations may be temporarily closed for periods when the tanks are not in operation.

Temporary Closure

There are typically two reasons for temporarily closing a UST; seasonal closures, and circumstances when a tank will be out of use for a period of time less than a year (the time limit imposed by fire code). Seasonal temporary closures occur in settings like resorts or marinas where weather or economics prohibit their use for some period during each year. In the other scenario, USTs are not in operation but are expected to return to service or permanently closed.

*Temporary closures **less than three months**, owners must:*

- operate and maintain cathodic protection (if any); and,
- perform leak detection or empty the tank to less than one inch of product.

*Temporary closures **three months or more**, owners must:*

- operate and maintain cathodic protection (if any);
- perform leak detection or empty the tank to less than one inch of product;
- submit a Temporary Closure Notice;
- leave vent lines open but cap and secure all other lines, pumps, manways and ancillary equipment; and,
- fire codes may limit temporary closure to one year.

Permanent Closure

Regulated USTs that do not meet state and federal regulations must be permanently closed. Permanent closure entails either the removal of the UST from the ground or closure in place. Closure in place must be approved by the local fire department and the DEQ. To properly close an UST in Utah, an owner must:

- Use a Utah Certified Remover;
- File a Closure Plan at least 30 days prior to closure activities and obtain approval from the DERR;
- Notify the local fire department, local health department, and the DEQ 72 hours prior to closing the tank;
- Close the tank either by removing it or by filling it with an inert substance, like sand or cement slurry;

- Have a certified sampler collect the necessary environmental samples and have the samples analyzed at a NELAP certified laboratory;
- If contamination is present, notify the DEQ within 24 hours; and,
- In the case of in-place closures, meet the requirements of the Division of Waste Management and Radiation Control (DWMRC) by placing a notice on the title of the property.

Closure Plan

A completed Closure Plan must be submitted by the Owner/Operator and approved by the director before commencing closure of the UST. A contractor may prepare the Closure Plan; however, the Owner/Operator is responsible for compliance with all rules and regulations. Changes to an approved plan must be submitted in writing to the DERR and approved before closing the UST. A copy of the approved Closure Plan must be on-site during closure activities. Once approved, the Closure Plan is valid for one year.

Closure Notice

Within 90 days of closing the UST, the Owner/Operator must submit the following:

- completed Closure Notice signed by the Owner/Operator and the certified sampler;
- site plat;
- analytical results of all samples; and,
- chain-of-custody form, which tracks the samples from the time they were collected until they were delivered to the laboratory.

The closure notice site plat **MUST** include:

- excavations, test pits, groundwater monitoring wells, soil stockpiles, sample locations, and collection depths;
- buildings, fences, property boundaries or other adjacent structures, and type of ground cover such as dirt, grass, gravel, asphalt, concrete, etc;
- information regarding land use around the site, such as residential, industrial or commercial;
- a north arrow and scale, the location of utilities conduits and exposure pathways such as sewers, storm drains, water lines, gas lines, etc; and,
- UST system including tanks, lines, dispensers, etc.

NOTE: Submit the Closure Notice with the sample analytical results within 90 days of closure.

Sampling at UST Closures

The appropriate number of environmental samples must be collected in native soil, below the backfill material and close to the tank, piping, or dispenser islands. Soil samples must be collected from a depth of zero to two feet below the backfill and native soil interface. If groundwater is encountered, soil samples must be collected from the unsaturated zone immediately above the capillary fringe. All environmental samples must be analyzed using the appropriate methods as provided by the DERR. Additional samples must be taken when contamination is found, suspected, or as requested by the DERR.

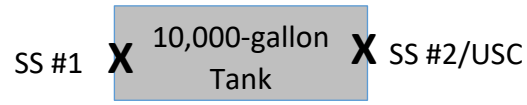
Unified Soil Classification (USC) Samples

USC samples must be analyzed according to ASTM D2488 Standard Practice for Description and Identification of Soils, and the DERR USC guidelines which include any geotechnical method which defines soil types. One USC sample must be collected at the same depth as environmental samples at each tank and piping area. For all dispenser islands, only one USC is required

Single Tank Excavation

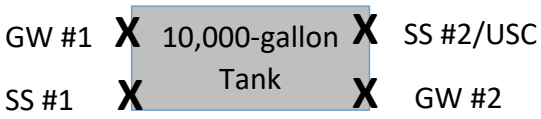
For an excavation containing one UST:

- collect one soil environmental sample at each end of the tank; and,
- collect one USC sample.



If groundwater is contacted during the process of collecting soil samples:

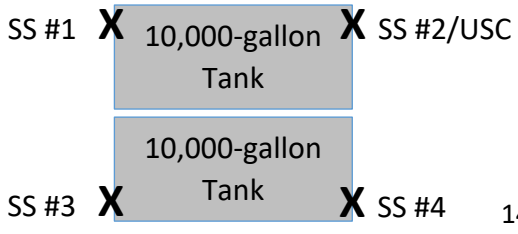
- collect a minimum of one groundwater at each end of the tank in addition to the soil samples.



Multiple Tank Excavation

For a tank area containing more than one UST:

- collect one soil sample at each corner of the tank excavation; and,
- collect one USC sample.



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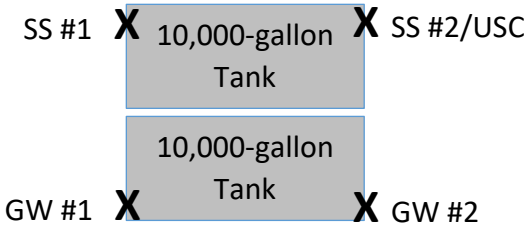
If groundwater is contacted during the process of collection soil samples:

- collect two groundwater samples and two soil samples at the end of the tank excavation; and,
- collect one USC sample at the same depth as environmental samples.



Piping

Collect samples at each product piping area, at locations where leaking is most likely to occur, such as joints, connections, and fittings. Samples must be collected at intervals which do not allow more than 50 feet of linear piping to go unsampled. If groundwater is encountered, collect a minimum of one groundwater sample and one soil sample from each sampling area. Collect one USC sample at the same depth as environmental samples.

Dispensers

Collect environmental samples from the middle of each dispenser island. Must be collected at intervals which do not allow more than 25 linear feet to go unsampled. If groundwater is encountered, collect a minimum of one soil sample and one water sample at each dispenser island. Only one USC sample is required for all the dispenser islands, collected at the same depth as environmental samples.

Soil Sampling Protocol

Introduction

Investigations at tank sites usually require chemical and physical analyses of soil samples that are collected at the sites. The data obtained serve as the basis for decisions regarding impacts to soil and potential drinking water supplies, and assessing actual and potential impacts to human health and the environment. Data obtained from soil samples at tank sites must, to the greatest extent possible, be accurate and representative of site conditions.

Soil sample types includes: grab, composite, tank closure, cleanup confirmation, and QA/QC (duplicate, split, blank, etc.). Typical sampling features include the following: excavations, test pits, soil borings, land farms, and stockpiles. Additional samples may be requested by the DERR project manager.

Field Screening

Field screening is generally conducted using a headspace analysis. To conduct headspace analysis, place a sample of soil in a plastic zip bag and allow the soil gas to volatilize.

NOTE: Headspace soil is not to be used for laboratory analytical samples.

Consider the following for field instruments:

- readings of a photoionization detector (PID), organic vapor monitor (OVM), or flame ionization detector (FID) should not be used to replace laboratory analytical results;
- PID/OVM/FID should be calibrated against a standard calibration gas before each use;
- a filter may be used with PID/OVM/FID when the soil moisture is high and/or the readings are hard to stabilize;
- readings measured at different depths of a soil boring should be recorded in the soil boring log; and,
- PID used for hydrocarbons should have a lamp voltage of 10.6 ev.

Field screening is a useful tool for determining sample locations, however, laboratory analytical samples should be placed in sampling containers within 30 seconds to 1 minute to avoid loss of analytes due to volatilization.

Subsurface Investigation Soil Sampling

Soil borings and/or monitoring wells are installed as part of the subsurface investigation at a leaking storage tank site to delineate the lateral and vertical extent of contamination. A decision on the locations and number of soil borings should be made in consultation with the DERR

project manager and should be determined based on site-specific information. If no contamination is evident in a boring, regardless of depth, a minimum of one soil sample should be collected. When contamination is suspected or evident in a boring, a minimum of one sample should be collected from above the impacted zone, from the impacted zone, and from below the impacted zone. Depending on site conditions, additional samples may be requested by the DERR project manager. If soil contamination is observed/registered (stains, odor, field instrumentation, etc.) at the bottom of a soil boring, the soil boring process should be continued until impacts are no longer evident and a "clean" soil sample is collected. The most common field instrumentation includes PID/OVM/FID. A sufficient number of soil samples from each boring should be analyzed to determine the vertical extent of contamination.

Corrective Action Confirmation Sampling

Confirmation samples are environmental samples that are collected to demonstrate that cleanup goals have been achieved after corrective action at the site is complete. The number and locations of samples should be determined in consultation with and approved by the DERR based on site- specific information.

When in-situ remediation is applied as a corrective action, the procedures of confirmation soil sampling are similar to those of subsurface investigation soil sampling. Multiple confirmation samples are to be collected in locations of known historic impacts.

If soil excavation is chosen as a corrective action option, at least one soil sample should be collected and analyzed from each sidewall and the bottom of an excavation pit after over excavation is complete.

Recommendations for confirmation sample collection include:

- sample intervals should not exceed 25 lateral feet;
- when contamination is suspected or evident, a minimum of one sample should be collected from above the impacted zone, from the impacted zone, and from below the impacted zone; and,
- samples should be taken from the location of the highest reading from a PID/OVM/FID.

NOTE: A sampling plan must be submitted with the corrective action plan. Additional samples may be requested by the DERR.

A backhoe can be used to collect samples from an excavation pit. During the sampling, the depth of sampling location should be measured and recorded. Soil samples should be collected away from the edges of the backhoe bucket to avoid cross contamination. A clean pair of nitrile gloves should be used for each sample.

Land Farm Sampling

Landfarming is frequently used to treat petroleum impacted soils on-site by enhancing volatilization and biodegradation. After a landfarming process is completed, confirmation soil sampling is needed to evaluate the effectiveness of the landfarming treatment. The general procedure of this type of soil sampling are summarized below:

1. Prepare a land farm map including a North arrow, a scale, and any relevant site landmarks.
2. Divide the land farm into a numbered grid
    a. size of the grid and number of confirmation soil samples should be determined in consultation with the DERR project manager.
3. Randomly select the sections that need to be sampled.
4. Collect grab samples from these chosen sections and submit the samples to a lab for analysis.

Proper Waste Disposal

Soil waste associated with sampling activities is likely to come from drilling activities or direct-push sampling events. The waste associated with excessive material from a soil sampling device may contain petroleum contamination and must be disposed in a manner that satisfies federal, state, and local laws. Soil may be segregated into clean and contaminated based on field instrumentation readings or observations.

Facilities that accept petroleum affected soils do exist throughout the state, but many of them require a waste profile evaluation prior to acceptance at the facility. Other options for disposal include land farming the soil until properly aerated, and staging the soil on site or at an approved location prior to disposal or aerating. Applicable permits and approvals are necessary prior to implementation of any alternative cleanup plan.

Gallon steel drums may be used to store petroleum-contaminated soil. Drums should be properly labeled as either hazardous or non-hazardous. Materials in the drum, certified sampler's name and company, date and time of generation should be clearly marked on the label. The drums should be transported and properly disposed of at a certified facility in a timely manner. Applicable manifests must be submitted to the DERR.

Soil Sampling QA/QC

The objective of quality control and assurance in the field of environmental sampling is to obtain defensible data of known quality and origin. In regards to environmental sampling and maintaining quality assurance and data quality objectives, see Appendix A.

Sample collection must be conducted in a manner that minimizes the loss of volatile organic compounds:

- transfer soil samples to sample containers as soon as they are collected (avoid sample exposure to sunlight/air);
- separate soil vapor screening and sample collection to avoid Volatile Organic Carbon (VOC) loss during sampling e.g. as soon as a split spoon is open or a plastic sampling tube is cut, soil samples must be collected and transferred to a sampling container immediately;
- eliminate headspace in sample containers unless sampling method dictates otherwise;
- preserve samples at 4° Celsius (39.2° Fahrenheit) during storage and delivery; and,
- collected samples should be properly preserved and stored, and analyzed by the laboratory within applicable holding times.

NOTE: Laboratory analytical detection limits must be sufficiently low in order to detect contaminant concentrations at or below Utah Initial Screening Levels (ISLs), Utah Tier 1 Screening Levels (Tier 1 SLs), or EPA Maximum Contaminant Levels (MCL) as applicable (see Appendix E.)

Chain-of-Custody

In order for analytical results to be defensible, a chain-of-custody must be established for all samples collected. Chain-of-custody must demonstrate that samples have not been tampered with during collection, transfer, storage, or analysis. This requires custody of the samples to be documented from the time the samples are collected.
A sample is under custody if:

- it is in the person's possession;
- it is in the person's view, after being in the person's possession;
- it was in the person's possession and then it was locked up or placed in a sealed container to prevent tampering; or,
- it is in a designated secure area.

NOTE: The sample is in a person's custody until the sample has physically been relinquished and the chain-of-custody form has been signed by both parties.

Chain-of-custody documentation must be maintained and provided for all samples collected. The chain-of-custody must include:

- unique sample identification (number or name);
- date and time of collection;
- place of collection;
- type of material, sample container, and preservation;
- signature of the certified sampler; and,
- signature and dates of persons involved in the transportation and handling of the sample.

NOTE: All sample identifications, names and numbers must be consistent throughout the Chain-of-custody documentation, laboratory analytical results, site map, data tables, and the report text. The depth at which a soil sample is collected must be measured, labeled, and recorded. Sample locations should be shown on a properly scaled and oriented site map.

In addition, field sampling information should be maintained in facility files and in field log books which should contain all information pertinent to each sampling event. The information recorded by the certified sampler should include but not be limited to:

- date;
- site name and location;
- site description and photo documentation;
- name of certified sampler, certification number, and date of expiration;
- purpose of sampling;
- sample identification, types, location, depth, time, and facility identification numbers; and,
- field measurements including instrument model and calibration specifications.

Containers, Preservation, and Holding Times

When possible, environmental samples should be transported directly to the laboratory by the certified sampler or representative. When shipping is required, the environmental samples must be placed in a container acceptable to both the laboratory and the carrier. Dry ice should not be used when shipping water samples to prevent the samples from freezing and breaking the glass containers.

The certified sampler should contact a NELAP certified laboratory in advance of sampling to determine that the lab is capable of conducting the sample analysis within the specified holding time. See Appendix B for maximum holding times. Certified samplers should also verify the number of containers and volume of sample needed in order to achieve appropriate detection levels prior to conducting the field sampling. Each laboratory should specify their required containers for each specific method and should be willing to supply their own certified containers for sample collection.

Field Equipment Decontamination Procedures.

The following procedures shall be used, at a minimum, for all reusable sampling equipment used to collect routine samples:

1. Clean with tap water and phosphate-free laboratory detergent using a brush if necessary to remove particulate matter and surface films. Equipment may be cleaned by using a

phosphate-free laboratory detergent and high-pressure water rinse (high-pressure wash) as an alternative to brushing.
2. Rinse thoroughly with tap water.
3. Rinse thoroughly with isopropanol. Do not rinse PVC or plastic items with isopropanol.
4. Rinse thoroughly with deionized water.

The following procedures shall be used, at a minimum, for field measurement devices used to collect field data:

1. Wash with phosphate-free laboratory detergent and tap water.
2. Rinse with tap water.
3. Rinse with isopropanol.
4. Rinse with deionized water.

NOTE: Do not reuse disposable equipment.

Groundwater Sampling Protocol

Introduction

Groundwater samples are usually obtained from groundwater monitoring wells. They can also be obtained from anywhere groundwater is accessible, such as from a porewater sampler, a pit, or a dug or drilled hole. Groundwater samples are generally collected using bailers, pumps or a variety of no purge grab sample and passive diffusion devices. Certified consultants and the DERR project managers are responsible for choosing the most appropriate sampling method for a given sample location.

Groundwater sampling procedures can be divided into two general categories: purge and no purge methods.

Total Well Depth Measurement

An electronic water level indicator or weighted tape can be used to determine the total well depth. This is accomplished by lowering the tape or cable until the weighted end is resting on the bottom of the well. In deep wells with long water columns, it may be difficult to determine when the tape end is touching the bottom of the well. Care must be taken in these situations to ensure accurate measurements. All total well depth measurements must be taken at the same reference point on the well casing during each sampling event and recorded to the nearest 0.01 foot.

Well Depth and Non-Aqueous Phase Liquids

Before sampling a monitoring well, the column of water in the well casing must be checked for the presence of nonaqueous phase liquids (NAPL), including free petroleum products that might be floating on top of the water or in a separate layer at the bottom of the casing. NAPL are identified by:

- carefully lowering a clean bailer, in a manner that will create minimum disturbance, into the well before purging and observing the liquids removed from the top and the bottom of the water column;
- using a paste type of detector with ingredients that will not lead to cross-contamination; or
- using an electronic device designed to detect NAPL and to measure the thickness of the NAPL layer.

NOTE: A photograph of the NAPL must be taken and provided in a report to the DERR.

Purging with Bailers

Monitoring wells must be purged before sampling unless otherwise approved by the DERR. Two general methods are used to purge monitoring wells before sampling: low flow/ low stress purging, where a well is purged at a low flow rate until physical and chemical parameters indicate that purge water is representative of conditions in the aquifer; and well volume purging, where a predetermined volume of water is removed prior to sampling.

NOTE: All purging methods can lead to over-purging if done incorrectly, so an awareness of drawdown and recharge rate during purging is important regardless of the technique that is employed. Over-purging may cause bias in sample laboratory analytical results. See overpurging section below.

Purge monitoring wells using the following procedure (or an equivalent):

1. Prior to handling any purging or sampling equipment, clean disposable nitrile gloves must be worn.
2. The depth of water, any NAPL, and the total well depth must be determined before purging. *NOTE: Groundwater samples shall not be collected from monitoring wells containing more than 0.01 feet of NAPL.*
3. Determine depth measurements using an electronic water level indicator or weighted tape.
    a. all depth measurements must be made and recorded to the nearest 0.01 foot.
4. Prior to initiating the purge, the amount of water standing in the water column (water inside the well riser and screen) must be calculated.
    a. the water level is subtracted from the total depth, providing the length of the water column
    b. the volume of water to be purged can be determined using the equation:

$$V = (h)(x)$$

Where,

h = height of water column in feet (total well depth minus depth to water)
x = volume in gal/ft
V = volume of water in gallons

For 1-inch well: x = 0.041
For 2-inch well: x = 0.163
For 4-inch well: x = 0.652

5. For well volume purging, at least three well casing volumes of water must be removed from the well before sample collection; or
    a. for low yield wells, until the well bore is evacuated.

6. For low flow purging, measure the purge water temperature, pH, and conductivity until these parameters are stable to within 10% variability between the last two measurements.
7. All purged water must be properly containerized or disposed.
8. Purge and sample from the farthest down gradient well to the most up gradient well or from the least contaminated well to the most contaminated well if previous sample results are available.
9. Record applicable information on DERR's "Field Data Information Sheet- Groundwater Sampling Log" (see Appendix D).

Groundwater Sampling with Bailers

1. After purging the well, allow sufficient time for the well to equilibrate and suspended solids to settle.
    a. If full recovery exceeds two hours, samples must be extracted as soon as sufficient volume is available.
2. The water level must be remeasured after purging has occurred and water level has returned to at least 70% of the static level.
3. If *decontaminated* equipment is used to collect the water sample, the equipment must be rinsed with analyte-free distilled or deionized water.
    a. a portion of this rinsate must be collected into a container appropriate for the most volatile analyte suspected (typically BTEX); this equipment blank must be contained, preserved, and analyzed according to the procedures outlined in this chapter for that analyte.
4. Reusable bailers must be made of glass, Teflon, stainless steel, or other suitable materials. Disposable bailers must be made of suitable materials for sampling VOCs/SVOCs.
5. Use new bailer line for each well sampled; wear clean disposable gloves when handling the bailer and line;
6. The bailer should be slowly lowered to minimize disturbance of the well and water column. NOTE: Do not allow the bailing line to contact with the outside of the well, ground surface, equipment, and clothing.
7. Obtain samples as close as possible to the water level/air interface, unless analysis indicates that contamination is at a different depth.
8. Slowly lift and transfer the contents of the bailer to a clean sample container with minimum disturbance and agitation to prevent loss of volatile compounds.
    a. if different analytes are sampled, transfer samples to containers in the order of their volatility.
    b. minimize headspace and bubbles in the sample container by filling the sample container until a positive meniscus is present.
9. Quickly and adequately seal sample containers.
10. Label all sample containers according to required information on chain-of-custody form.
11. Immediately following sample collection, preserve samples to

4°C.This temperature must be maintained in the field and through delivery to the laboratory until analysis. *NOTE: Samples may not be accepted by the laboratory above this temperature.*

Purging with Sampling Pump

Pumps are used for purging and sampling when low flow techniques are required or when wells are too deep or contain volumes of water too great to be effectively sampled with bailers. Immediately following purging, samples must be collected using the techniques which are described below:

Peristaltic Pumps - When peristaltic pumps are used, only the intake tubing is placed into the water column.

1. Sample tubing should be lowered until it is midway within the saturated portion of the screened interval of the well, but at least two feet above the bottom of the well to avoid agitating any particulates present at the bottom of the well.
2. When purging is complete, the downhole tubing should be filled and disconnected from the flexible pump tubing.
3. After donning a new nitrile glove, the certified sampler should place a finger over the tubing, which is removed from the well.
4. Water is then poured from the tubing into the sample containers with minimal contact with air entrained in the tubing.
5. Do not collect samples directly from the silicone tubing attached to the pump's rotor.

Submersible Pumps - Several types of submersible pumps are commonly used for groundwater purging and sampling, including bladder pumps, piston pumps and gear driven pumps. After purging has been accomplished with a submersible pump, the sample may be obtained directly from the pump discharge or with a bailer. The discharge rate of the pump must be minimized during sampling to diminish sampling disturbance. This is especially important for the collection of VOC and metals samples.

Over-Purging

Even when purge rates are minimized, a well may be pumped or bailed until it is effectively dewatered or dry. In these situations, dewatering constitutes the effective limit of purging. If a well is over-purged, it may result in the sample being comprised partially of water contained in the sand pack, which is not representative of groundwater in the soil. In addition, as water re-enters the well, it may cascade down the sand pack or the well screen, leading to the removal of volatile organic constituents that may be present. It is important to evaluate drawdown during purging to ensure that wells are not dewatered, and the resulting samples compromised.

NOTE: For wells that are dewatered, it is not necessary that the well be bailed dry additional times before sampling. The well should be allowed to equilibrate for at least two hours or until the water level has reached 75% of its level prior to purging before sampling. Resampling may be required if the well is sampled before it reaches at least 75% recovery. All associated QA/QC sampling must also be collected. If resampling is required, the costs related to the resampling may not be reimbursable from the Petroleum Storage Tank Trust (PST) Fund. Options for sampling wells that do not meet recharge requirements should be discussed with the DERR project manager.

If it appears that a well is being over-purged, i.e. the groundwater table has been drawn down more than a foot when it is within the screened interval, it may be preferable for a sample to be collected after the well is allowed to recharge without additional purging. The DERR project manager should be notified when poor recharge in monitoring wells may affect the quality of groundwater data. Approximate recharge rates, final depth to groundwater, and indicator parameters during or immediately following sampling must be recorded.

NOTE: If the water column in a screened interval is less than 6 inches, consult the DERR project manager before collecting a sample. The well may need to be rehabilitated or drilled to a greater depth. If the well needs to be rehabilitated, do not collect a sample until the water table equilibrates.

No-Purge Sampling

Sample collection methods without purging must be approved by the DERR. No-purge samples may be collected when the following conditions are met:

1. The water level in the well is within the screened interval;
2. The primary contaminants are petroleum constituents; and
3. There is no NAPL present.

Depth to water, before and after sample collection, depth to bottom, and indicator parameters: pH, conductivity, dissolved oxygen, and turbidity, must be measured and recorded for no purge samples.

Alternate No-Purge Sampling Techniques

Alternate methods for collecting no-purge samples are presented below.

Passive Diffusion Bag Samplers - Diffusion sampling is a method of groundwater sampling for certain VOCs.

1. Proper QA/QC on the quality of the deionized water needs to be obtained in order to adequately interpret sample results.

2. The sampler must be positioned within the screened interval of the well and allowed to equilibrate for a period of two weeks.
3. The sampler is then removed and the water is emptied into a standard sampling container.

SNAP Sampler® - SNAP Samplers® may be used to collect no-purge groundwater at discreet depths.

1. The sampler is deployed at a predetermined depth within the screened interval of the well, and the water within the well is allowed to equilibrate for a minimum of two weeks.
2. The device and sealed containers are retrieved, and any required preservative is injected into the container prior to being sealed with a screw-on cap for transport to the laboratory.

HydraSleeve™ Sampler - may be used to collect groundwater at discreet depths.

1. Disposable colorless nylon rope and a decontaminated weight must be attached to the sampler.
2. The sampler must be positioned at the depth of interest and allowed to equilibrate for a sufficient amount of time per manufacturers recommendations.
3. The sampler is removed and the water is emptied into a standard sampling container.

Surface Water Sampling

Consultants are responsible for providing SOPs for sampling, the DERR requires that the following requirements are met:

1. Surface water samples should be collected in a manner that minimizes the potential for cross contamination caused by contact with sampling equipment or sediment suspended during collection.
2. Surface water sample collection should not allow preservative to be washed out of the sample container.
3. Surface water temperature, pH, dissolved oxygen, and conductivity should be measured and recorded on a field form or log book immediately following the collection of samples.
4. Samples should be collected from the portion of the water body closest to the release sites.
5. Surface water sample locations should be recorded using GPS coordinates and/or photographs and marked with flagging tape hung at eye level or an equivalent marker to allow the location to be accurately resampled.

Culinary Water Sampling

Culinary water samples collected from chlorine treated water, such as household tap water, should be collected from the cold-water supply and be preserved with approximately 3mg sodium thiosulfate. This powdery chemical is typically added to the sampling vial by the issuing laboratory. The tap should be allowed to run for a minimum of one minute prior to collecting the sample. There are no additional procedures to follow other than ensuring that no headspace exists between the surface of the sample and the vial's cap.

Proper Waste Disposal

Petroleum affected water associated with sampling is typically generated from development, purging, or sample collection. This waste can be managed in several ways depending upon site conditions or the availability of disposal/treatment sites. After the sample is collected, the purge water may be poured into the monitoring well from which it came. This process eliminates the need to transfer water away from the site.

Disposing the water at an approved treatment facility is also an option, but some facilities require a laboratory evaluation of the wastewater prior to acceptance. In this case the certified sampler will have to arrange for chemical analysis of the waste water, and for the storage and transportation of it. Other disposal methods may be appropriate based upon site-specific conditions.

NOTE: If more than 0.01 feet NAPL is present in the well, the water waste should be containerized and disposed of appropriately.

Water Sampling QA/QC

The objective of quality control and assurance in the field of environmental sampling is to obtain defensible data of known quality and origin. In regards to environmental sampling and maintaining quality assurance and data quality objectives, see Appendix A.

Sample collection must be conducted in a manner that minimizes the loss of volatile organic compounds:

1. Transfer water samples to sample containers as soon as they are collected. Avoid sample exposure to sunlight/air.
2. Eliminate headspace in sample containers unless sampling method dictates otherwise.
3. Preserve samples at 4° Celsius (39.2° Fahrenheit) during storage and delivery.
4. Collected samples should be properly preserved and stored, and analyzed by the laboratory within applicable holding times.

NOTE: Laboratory analytical detection limits must be sufficiently low in order to detect contaminant concentrations at or below Utah ISLs, Utah Tier 1 SLs, or EPA MCL as applicable (see Appendix E.)

Chain-of-Custody

In order for analytical results to be defensible, a chain-of-custody must be established for all samples collected. Chain-of-custody must demonstrate that samples have not been tampered with during collection, transfer, storage, or analysis. This requires custody of the samples to be documented from the time the samples are collected.

A sample is under custody if:

- it is in the person's possession;
- it is in the person's view, after being in the person's possession;
- it was in the person's possession and then it was locked up or placed in a sealed container to prevent tampering; or,
- it is in a designated secure area.

NOTE: The sample is in a person's custody until the sample has physically been relinquished and the chain-of-custody form has been signed by both parties.

Chain-of-custody documentation must be maintained and provided for all samples collected. The chain-of-custody must include:

- unique sample identification (number or name);
- date and time of collection;
- place of collection;
- type of material, sample container, and preservation;
- signature of the certified sampler; and,
- signature and dates of persons involved in the transportation and handling of the sample.

NOTE: All sample identifications, names, and numbers must be consistent throughout the Chain-of-custody documentation, laboratory analytical results, site map, data tables, and the report text. The groundwater depth below ground surface must be measured and recorded. Sample locations should be shown on a properly scaled and oriented site map.

In addition, field sampling information should be maintained in facility files and in field log books which should contain all information pertinent to each sampling event. The information recorded by the certified sampler should include but not be limited to:

- date;
- site name and location;
- site description and photo documentation;
- name of certified sampler, certification number, and date of expiration;

- purpose of sampling;
- sample identification, types, location, depth, time, and facility identification numbers; and,
- field measurements including instrument model and calibration specifications.

Containers, Preservation, and Holding Times

When possible, environmental samples should be transported directly to the laboratory by the certified sampler or representative. When shipping is required, the environmental samples must be placed in a container acceptable to both the laboratory and the carrier. Dry ice should not be used when shipping water samples to prevent the samples from freezing and breaking the glass containers.

The certified sampler should contact a NELAP certified laboratory in advance of sampling to determine that the lab is capable of conducting the sample analysis within the specified holding time. See Appendix B for maximum holding times. Certified samplers should also verify the number of containers and volume of sample needed in order to achieve appropriate detection levels prior to conducting the field sampling. Each laboratory should specify their required containers for each specific method and should be willing to supply their own certified containers for sample collection.

Field Equipment Decontamination Procedures

The following procedures shall be used, at a minimum, for all reusable sampling equipment used to collect routine samples:

1. Clean with tap water and phosphate-free laboratory detergent using a brush if necessary to remove particulate matter and surface films. Equipment may be cleaned by using a phosphate-free laboratory detergent and high-pressure water rinse (high-pressure wash) as an alternative to brushing.
2. Rinse thoroughly with tap water.
3. Rinse thoroughly with isopropanol. Do not rinse PVC or plastic items with isopropanol.
4. Rinse thoroughly with deionized water.

The following procedures shall be used, at a minimum, for field measurement devices used to collect field data:

1. Wash with phosphate-free laboratory detergent and tap water.
2. Rinse with tap water.
3. Rinse with isopropanol.
4. Rinse with deionized water.

NOTE: Do not reuse disposable equipment.

Air Sampling Protocol

Introduction

Air sampling is necessary when petroleum vapors are reported to the DERR. The petroleum vapors may be reported in and around buildings, utilities conduits, etc. Air sampling may also be necessary when subsurface investigations and corrective actions are unable to demonstrate incomplete exposure pathways for indoor air and outdoor air. Evaluation of these exposure pathways can be done by using Utah's Site-Specific Cleanup Level (SSCL) Calculator v1.2. EPA's Vapor Intrusion Screening Level calculator and/or EPA's PVIScreen software may also be used for screening purposes. Exceedances of action levels in these screening tools may necessitate soil vapor sampling. The DERR SSCL Calculator will be used to establish vapor cleanup levels. According to Division of Air Quality (DAQ) requirements, air sampling may be necessary during corrective action, such as off-gas sampling in soil vapor extraction (SVE) systems.

The types of air sampling discussed in this protocol are: hand held direct measurement, concurrent indoor/outdoor, sub-slab/near-slab, and soil gas, sorbent tubes, and off-gas.

Vapor Probe Installation

Temporary Vapor Probe

- Self-Sealing Vapor Probe - Installation and removal performed by qualified drilling contractor.
- Traditional Vapor Probe
  - install a stainless-steel hollow rod specifically manufactured for vapor sampling, according to manufacturer specifications.
  - properly abandon the sampling points after sampling has concluded.

Permanent Vapor Probe

- Direct push (self-sealing vapor probe) – Installation performed by qualified drilling contractor.
- Probes in building foundations - Hand Placement
  - use an appropriate hammer drill to create a hole large enough for a vapor probe to be inserted.
  - the final vapor probe placement must be flush with the surrounding surface to avoid creating a trip hazard.
  - seal the surface of the vapor probe.
- Probe in ground surface – Hand Placement
  - remove soil to desired sample depth.
  - place sample probe at desired sampling depth.

- flexible tubing should connect the probe to the ground surface.
- fill with sand pack and place bentonite seal.
- if placing nested vapor probes in the same hole, place the next probe above the bentonite seal at the desired depth.
- sand pack and bentonite seal the probe.
- repeat these steps as needed according to work plan.
- seal the surface of the sampling location. If necessary, place a well monument to protect the probe from damage.

Leak Testing

DERR recommends proprietary self-sealing vapor probes installed to manufacturer specifications for ease of installation and minimized leak risk. However, other types of probe installations are permissible when installed properly to prevent leaks. Before taking a sample from the probe, allow for appropriate equilibration time, at least 30 minutes.

Leak testing should be conducted after installation and each time a sample probe is used. A simple leak test is done by soaking paper towels in isopropanol and placing them on the ground surrounding the vapor probe during sample collection. Isopropanol (or other tracer gas) should then be included in the laboratory analytical results. Companies or laboratories may also use their own protocols for leak testing. The chosen method of leak detection should be communicated to DERR.

NOTE: If laboratory results indicate a leak in the sample train, the DERR will not accept the sample results. Seal the leak(s) and resample.

Hand Held Direct Measurement Sampling

Suitable only for screening (not quantitative.) Potential uses include storm and sanitary sewer manholes, locating areas of higher concentrations in buildings, etc. Potentially used to inform further vapor investigations.

- Use a PID/FID/OVM calibrated to manufacturer specifications.
- Place the tip of device in desired location and take a reading.
  - ensure tip is not placed in location where debris will get inside the tip.
  - ensure tip is not placed in a location with potential for bias, ex: an abnormally windy location, near a geoprobe/field vehicle, etc.
  - record reading and location in field log.

Indoor/Outdoor Air Sampling

- Record the starting pressure of the canister.
- Set the system up to run for the specified amount of time as approved by DERR. *NOTE: Do not let the pressure gauge go to zero. Record end*

canister pressure. The ending *canister pressure allows the laboratory to know if the valve functioned correctly.*
    - record sample start time in log book.
    - ensure sample setup is in a protected location, unlikely to be disturbed.
- Return to collect the sample after the time has elapsed.
    - close the valve and place the cap over the inlet.
- Follow all laboratory chain of custody guidelines.
- Follow all Department of Transportation (DOT) hazardous materials shipping guidelines if sending samples to laboratory through mail.

NOTE: Do not take samples near possible sources of bias. There are many common household products that can bias samples. Prior to conducting indoor air sampling, consult with DERR project manager and DERR toxicologist.

Sub-Slab/Near Slab/Soil Gas Sampling

- If sampling a vapor probe, purge three volumes of the sample train and vapor probe prior to sampling. This can be done using a disposable plastic syringe or other method as approved by the DERR.
- Record the starting pressure of the canister.
- Connect canister inlet to the vapor probe using nylon or Teflon tubing.
- Open valve.
- Allow the canister to nearly fill.
    - do not let the pressure gauge go to zero. Record end canister pressure. The ending canister pressure allows the laboratory to know if the valve functioned correctly. The canister is full when you can no longer hear the gas entering.
- Close the valve and place a cap over the inlet.
- Follow all laboratory chain of custody guidelines.
- Follow all DOT hazardous materials shipping guidelines if sending samples to laboratory through mail.

NOTE: Ensure the canister is not near a field vehicle, geoprobe rig, or other source of bias in sample.

Sorbent Tube Sampling

Sorbent tube sampling can be used for off-gas sampling and for screening purposes. Other uses for sorbent tube sampling need to be approved by DERR. DERR recommends canisters for use in sub-slab, near-slab, soil-gas, indoor air, and outdoor air.

- Allow the pump to run according to laboratory specifications.
- Following the run time:
    - o place caps on tubes

    - o wrap the tubes in foil
    - o keep ≤ 4°C
- Follow all laboratory chain of custody guidelines.
- Follow all DOT hazardous materials shipping guidelines if sending samples to the laboratory through mail.

Soil Vapor Extraction Off-Gas Sampling

SVE systems are designed to allow for off-gas samples. Samples should be collected according to requirements by permitting agency.

- PID/FID//OVM
    - insert PID/FID/OVM into sample port
    - record reading in log book.
- Tedlar® bag
    - attach the bag inlet by flexible tubing to sample port.
    - open the valve for the SVE system and open the valve for the bag.
    - allow to fill (usually takes seconds.)

NOTE: Do not allow bags to overfill. Do not chill Tedlar® bags.

- Sorbent Tubes – Follow procedures for sorbent tube samples above.
- Repeat sampling as often as is required by DERR approved Corrective Action Plan (CAP) or DAQ permit.

Air Sampling QA/QC

The objective of quality control and assurance in the field of environmental sampling is to obtain defensible data of known quality and origin. In regards to environmental sampling and maintaining quality assurance and data quality objectives. See Appendix A.

Sample collection must be conducted in a manner that minimizes the loss of volatile organic compounds:

1. Transfer samples to sample containers as soon as they are collected. Avoid sample exposure to sunlight/air.
2. Preserve samples as directed by the analytical laboratory during storage and delivery.
3. Collected samples should be properly preserved and stored, and analyzed by the laboratory within applicable holding times.

NOTE: Laboratory analytical detection limits must be sufficiently low in order to detect contaminant concentrations at or below applicable output from SSCL.

Chain-of-Custody

In order for analytical results to be defensible, a chain-of-custody must be established for all samples collected. Chain-of-custody must demonstrate that samples have not been tampered with during collection, transfer, storage, or analysis. This requires custody of the samples to be documented from the time the samples are collected.

A sample is under custody if:

- it is in the person's possession;
- it is in the person's view, after being in the person's possession;
- it was in the person's possession and then it was locked up or placed in a sealed container to prevent tampering; or,
- it is in a designated secure area.

NOTE: The sample is in a person's custody until the sample has physically been relinquished and the chain-of-custody form has been signed by both parties

Chain-of-custody documentation must be maintained and provided for all samples collected. The chain-of-custody must include:

- unique sample identification (number or name);
- date and time of collection;
- place of collection;
- type of material, sample container, and preservation;
- signature of the certified sampler; and,
- signature and dates of persons involved in the transportation and handling of the sample.

NOTE: All sample identifications, names and numbers must be consistent throughout the chain-of-custody documentation, laboratory analytical results, site map, data tables, and the report text. The groundwater depth below ground surface must be measured and recorded. Sample locations should be shown on a properly scaled and oriented site map.

In addition, field sampling information should be maintained in facility files and in field log books which should contain all information pertinent to each sampling event. The information recorded by the certified sampler should include but not be limited to:

- date;
- site name and location;
- site description and photo documentation;
- name of certified sampler, certification number, and date of expiration;
- purpose of sampling;
- sample identification, types, location, depth, time, and facility identification numbers; and,
- field measurements including instrument model and calibration specifications.

Containers, Preservation, and Holding Times

When possible, environmental samples should be transported directly to the laboratory by the certified sampler or representative. When shipping is required, the environmental samples must be placed in a container acceptable to both the laboratory and the carrier. Dry ice should not be used when shipping water samples to prevent the samples from freezing and breaking the glass containers.

The certified sampler should contact a NELAP certified laboratory in advance of sampling to determine that the lab is capable of conducting the sample analysis within the specified holding time. See Appendix C for maximum holding times. Certified samplers should also verify the number of containers and volume of sample needed in order to achieve appropriate detection levels prior to conducting the field sampling. Each laboratory should specify their required containers for each specific method and should be willing to supply their own certified containers for sample collection.

Health and Safety

General

Personal safety is paramount at tank sites. Petroleum products are toxic and present fire and explosion hazards. Personal safety in the collection of environmental samples at tank facilities must meet the standards required by federal and state regulatory agencies.

Health and Safety at tank facilities:

- prevents work-related injuries, illnesses, and property damage;
- prevents public exposure to harmful substances; and,
- increases overall productivity and maintains project schedules.

Petroleum products are toxic, carcinogenic, and flammable. Therefore, these products should be handled with a great deal of care. Petroleum products can enter the body through the following exposure pathways:

- inhalation;
- ingestion;
- injection; and,
- skin or eye absorption.

Exposure

There are two types of exposure duration:

- acute – short term, high level exposure; and,
- chronic –long term low-level exposure.

Acute effects are typically immediate, and chronic effects typically manifest over time. Both are dangerous. Because petroleum products are a mixture of chemicals, the different components may enhance the hazardous effects of others.

NOTE: All exposures should be minimized as much as possible.

Signs and symptoms of petroleum constituent exposure are often vague and easily missed. The onset of symptoms may even be delayed up to 8 days after exposure and include:

- weakness;
- fatigue;
- headache;
- nausea;
- vomiting;
- diarrhea;

- insomnia; and,
- weight loss.

Personal Protective Equipment (PPE)

PPE protects personnel from vapors, gases, and particulates from hazardous materials. Certified samplers must wear appropriate personal protective clothing and equipment whenever they are at or near the site. The more that is known about the hazards at a release site, the easier it becomes to select PPE. There are four levels of PPE: Level A, Level B, Level C, and Level D.

Level A protection is required when the greatest potential for exposure to hazards exists, and when the greatest level of skin, respiratory, and eye protection is required. Examples of Level A clothing and equipment include positive-pressure, full face-piece self-contained breathing apparatus (SCBA) or positive pressure supplied air respirator with escape SCBA, totally encapsulated chemical- and vapor-protective suit, inner and outer chemical-resistant gloves, and disposable protective suit, gloves, and boots.

Level B protection is required under circumstances requiring the highest level of respiratory protection, with lesser level of skin protection. At most abandoned outdoor hazardous waste sites, ambient atmospheric vapors or gas levels have not approached sufficiently high concentrations to warrant level A protection – Level B protection is often adequate. Examples of Level B protection include positive-pressure, full face-piece SCBA or positive pressure supplied air respirator with escape SCBA, inner and outer chemical- resistant gloves, face shield, hooded chemical resistant clothing, coveralls, and outer chemical-resistant boots.

Level C protection is required when the concentration and type of airborne substances is known and the criteria for using air purifying respirators is met. Typical Level C equipment includes full-face air purifying respirators, inner and outer chemical-resistant gloves, hard hat, escape mask, and disposable chemical-resistant outer boots. The difference between Level C and Level B protection is the type of equipment used to protect the respiratory system, assuming the same type of chemical-resistant clothing is used. The main criterion for Level C is that atmospheric concentrations and other selection criteria permit wearing an air-purifying respirator.

Level D protection is the minimum protection required. Level D protection may be sufficient when no contaminants are present or work operations preclude splashes, immersion, or the potential for unexpected inhalation or contact with hazardous levels of chemicals. Appropriate Level D protective equipment may include gloves, coveralls, safety glasses, face shield, and chemical-resistant, steel-toe boots or shoes.

Health and Safety Plan

The HAZWOPER Standard requires employers working on sites with hazardous substances and wastes to develop site-specific health and safety plans (HASPs). The HASP is composed of various sections that outline the work and the address the associated hazards. The following topics must be addressed in the site HASP:

- general information;
- planned site activities;
- contaminant characteristics;
- site description;
- hazard evaluation and mitigation;
- site safety work plan;
- excavations and trenching;
- map with scale;
- hospital locations; and,
- emergency phone numbers.

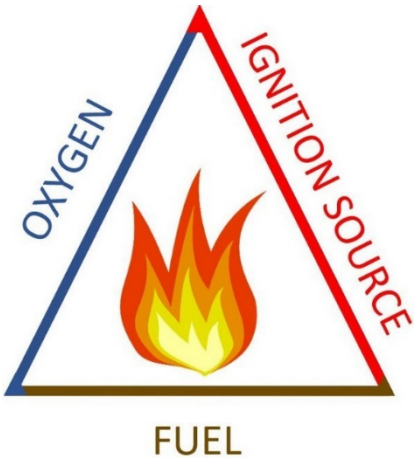
Combustion Hazards

Fire Triangle

Most UST removals will involve flammable vapors from products stored in the tank and from accumulated residues left in the tank even after it has been pumped dry.

Certified samplers must be aware of the basic fire triangle:

- fuel
- oxygen; and,
- heat or ignition source



Source: http://umich.edu/~safeche/firetriangle.html

All three points of the triangle are necessary to support combustion. These three elements need to be recognized, evaluated, and controlled to make a safe work place and avoid disaster. Safe tank removal requires continuous attention to these potential hazards to eliminate or reduce the risk of explosion.

Risks can be minimized by removing at least one point from the fire triangle. This is done by purging or inerting the potentially explosive atmosphere in the tank

Purging or ventilating the tank replaces or dilutes the flammable vapors in the tank with air, reducing the flammable mixture of fuel and oxygen by eliminating the fuel point of the triangle. Purging is considered complete when the atmosphere inside the tank is 10% or less of the Lower Explosive Limit (LEL). The LEL is the lowest concentration of a flammable gas or vapor (percent by volume in air) in which an explosion can occur upon ignition in a confined area

Inerting displaces the oxygen (and some of the fuel vapor) in the tank with an inert or non-reactive gas such as nitrogen or carbon dioxide. This reduces the flammable mixture of fuel and oxygen by dealing with the oxygen point of the triangle. Inerting is considered complete when the atmosphere inside the tank has an oxygen reading of 5% or less.

References

- *Collecting and Interpreting Soil Gas Samples from the Vadose Zone: A practical Strategy for Assessing the Subsurface Vapor-to-Indoor Air Migration Pathway at Petroleum Hydrocarbon Sites.* API. November 2005.
- *Compendium of ERT Surface Water and Sediment Sampling Procedures*, (EPA/540/P-91/005, January 1991)
- *Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air, Second Edition. Compendium Method TO-15. Determination of Volatile Organic Compounds in Air Collected in Specially-Prepared Canisters and Analyzed by Gas Chromatography / Mass Spectrometry.* January 1999.
- *Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air, Second Edition. Compendium Method TO-17. Determination of Volatile Organic Compounds in Ambient Air Using Active Sampling onto Sorbent Tubes*. January 1999.
- *Contract Laboratory Program Guidance for Field Samplers*, (EPA-540-R-014-013, October 2014)
- *Cost Guidelines for Utah Underground Storage Tank Sites* (DEQ, February 22, 2021)
- *Description and Sampling of Contaminated Soils, A Field Pocket Guide,* (EPA/625/12-91/002, November 1991)
- *Samplers and Sampling Procedures for Hazardous Waste Streams,* (EPA 600/2-80-018, January 1980)
- *Sampling for Hazardous Materials (165.9) Student Manual,* (EPA/540/R-96/035, December 1996)
- *Soil Gas Sampling Operating Procedure. EPA Region 4.* February 2020.
- *Soil Vapor & Indoor Air Sampling Technical Toolkit, Version 1.9. Chevron Environmental Management & Real Estate Company*. October 2019.
- *Standard Operating Procedures for Field Samplers,* (EPA Region VIII ESD, March 1986)

Appendix A

Table 1. Quality Control Reference Table for Environmental Sampling

Type of sample	Number of samples needed	Notes
Duplicate (Real sample with fictitious label. Ex: MW-1 thru MW-3 sampled with duplicate taken from MW-1 and labeled as MW-1A or MW-4)	5% frequency (e.g., 1 duplicate for every 20 lab samples collected). Minimum of 1 needed per sampling event.	Results w/in 10% of the relative deviation between the real sample and the duplicate sample.
Field blanks (DI water prepared in the field)	1 per day per site.	Only use DI water. Results must be less than laboratory MDL's.
Trip blanks (DI water prepared by lab or sampler prior to field work)	1 for each VOC sampling event per site.	Only use DI water. Results must be less than laboratory MDL's.
Rinsate blanks (not typically needed based on new or "dedicated" bailers routinely used at each sampling event)	1 per day per sampling device if not using dedicated or new one- time use disposable bailer.	Not needed if dedicated or new one-time use disposable bailers are used at each sampling location
Split samples (not typically needed for routine LUST sites)	At least 2 collected per sampling site, if deemed necessary.	Same sampling location, but two samples are obtained and "split" between two different laboratories to compare analytical results.

Appendix B

Table 2. Containers, Preservatives, Holding Times for Soil and Groundwater Reference Table

Volatile Organic-Soil					
Analysis	**Method**	**Container**	**Volume**	**Preservative**	**Holding Time**
Gasoline/TPH	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days
Gasoline/BTEX	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days
Diesel/TPH	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days**
Diesel/BTEXN	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days
Halocarbons	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days
Aromatics	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days
Purgeables	See Analytical Method Table	Glass	4 oz.	Cool 4ºC	14 days

** 14 days to extraction, 40 days after extraction to analysis

Semi-Volatile Organics-Soil					
Analysis	**Method**	**Container**	**Volume**	**Preservative**	**Holding Time**
TRPH	See Analytical Method Table	Glass	4 or 9 oz.	Cool 4ºC	28 days
Oil & Grease	See Analytical Method Table	Glass	4 or 9 oz.	Cool 4ºC	28 days

Appendix C

Table 3. Preservation and Holding Times for Air Samples

EPA Laboratory Method	Description	Holding Time
TO-15	Analysis of VOC's collected in canisters by gas chromatography/mass spectrometry**.** Laboratory report should be generated for MBTEXN, TPH, Oxygen, Carbon Dioxide, Methane, and the tracer gas used unless otherwise approved by the DERR.	30 days; do not chill
TO-17	Analysis of VOC's collected in active sorbent tubes by gas chromatography/mass spectrometry. Laboratory report should be generated for MBTEXN, TPH, Oxygen, Carbon Dioxide, and Methane unless otherwise approved by the DERR.	30 days; must be kept at 4°C

Appendix D

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY ENVIRONMENTAL RESPONSE & REMEDIATION	FIELD DATA INFORMATION SHEET – GROUNDWATER SAMPLING LOG

SITE INFORMATION

Facility Name & Address:		Facility ID:
Release ID:	Date(s) in Field:	DERR Project Manager:

WELL SAMPLING INFORMATION

Well ID	Casing Diameter (in)	Measured Well Depth (ft	Screened Interval (ft bgs)	Depth to Product	Depth to Water	Length of Water Column (ft	Calculated Purge Vol. (gal)*	Vol. Purged (gal)**	D.O. (mg/L)	Temp (°C)	Specific Conductivity (µmohs/cm)	pH (SU)	Turbidity (NTU)	Purge Method

Notes *(e.g., odor, sheen, slow recharge, well dry,*

etc.):	
* *Well Dia. (in)* 2" | 3" | 4" | 6" *Vol. (gal/ft)* *0.163* | *0.367* | *0.652* | *1.468* Printed Name:	Certified Sampler Signature:

Appendix E

Initial Screening Levels
November 1, 2005

Contaminants*	Groundwater *(mg/L)*	Soil *(mg/kg)*
Benzene	0.005	0.2
Toluene	1.0	9
Ethylbenzene	0.7	5
Xylenes	10.0	142
Naphthalene	0.7	51
Methyl t-butyl ether (MTBE)	0.2	0.3
Total Petroleum Hydrocarbons (TPH) as gasoline	1	150
Total Petroleum Hydrocarbons (TPH) as diesel	1	500
Oil and Grease or Total Recoverable Petroleum Hydrocarbons (TRPH)	10	1000

Tier 1 Screening Criteria
November 1, 2005

Tier 1 Screening Levels are applicable only when the following site conditions are met:
1.) No buildings, property boundaries or utility lines within 30 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 AND,
2.) No water wells or surface water within 500 feet of 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.

Contaminants *	Groundwater *(mg/L)*	Soil *(mg/kg)*
Benzene	0.3	0.9
Toluene	3	25
Ethylbenzene	4	23
Xylenes	10	142
Naphthalene	0.7	51
Methyl t-butyl ether (MTBE)	0.2	0.3
Total Petroleum Hydrocarbons (TPH) as gasoline	10	1500
Total Petroleum Hydrocarbons (TPH) as diesel	10	5000
Oil and Grease or Total Recoverable Petroleum Hydrocarbons (TRPH)	10	10000

Appendix F

Analytical Methods for Environmental Sampling at
Underground Storage Tank Sites in Utah (July 2013)

Substance or Product Type	Contaminant Compounds to be Analyzed for Each Substance or Product Type	ANALYTICAL METHODS[1]
		Groundwater or Surface Water
Gasoline	Total Petroleum Hydrocarbons (purgeable TPH as gasoline range organics C6 - C10)	EPA 8015 or EPA 8260
	Benzene, Toluene, Ethyl benzene, Xylenes, Naphthalene, (BTEXN) and MTBE	EPA 8021 or EPA 8260
Diesel	Total Petroleum Hydrocarbons (extractable TPH as diesel range organics C10 – C28)	EPA 8015
	Benzene, Toluene, Ethyl benzene, Xylenes, and Naphthalene (BTEXN)	EPA 8021 or EPA 8260
Used Oil	Oil and Grease (O&G) or Total Recoverable Petroleum Hydrocarbons (TRPH)	EPA 1664 or EPA 1664 (SGT*)
	Benzene, Toluene, Ethyl benzene, Xylenes, Naphthalene (BTEXN) & MTBE; and Halogenated Volatile Organic Compounds (VOX)	EPA 8021 or EPA 8260
New Oil	Oil and Grease (O&G) or Total Recoverable Petroleum Hydrocarbons (TRPH)	EPA 1664 or EPA 1664 (SGT*)
Other	Type of analyses will be based upon the substance or product stored, and as approved by the DERR Division Director	Method will be based upon the substance or product type
Unknown	Total Petroleum Hydrocarbons (purgeable TPH as gasoline range organics C6 - C10)	EPA 8015 or EPA 8260
	Total Petroleum Hydrocarbons (extractable TPH as diesel range organics C10 – C28)	EPA 8015
	Oil and Grease (O&G) or Total Recoverable Petroleum Hydrocarbons (TRPH)	EPA 1664 or EPA 1664 (SGT*)
	Benzene, Toluene, Ethyl benzene, Xylenes, and Naphthalene (BTEXN) and MTBE; and Halogenated Volatile Organic Compounds (VOX)	EPA 8021 or EPA 8260

The following modifications to these certified methods are considered acceptable by the DERR Division Director:

- Dual column confirmation may not be required for TPH and BTEXN/MTBE analysis.
- A micro-extraction or scale-down technique may be used for aqueous samples, but only for the determination of extractable TPH as diesel range organics (C10 – C28).
- Hexane may be used as an extraction solvent.
- *Silica Gel Treatment (SGT) may be used in the determination of Total Recoverable Petroleum Hydrocarbons.

NOTE: The sample preparation method and any modification(s) to a certified method must be reported by the laboratory.

UTAH DEPARTMENT *of*
ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE
& REMEDIATION

Cost Guidelines

for Utah

Underground Storage Tank Sites

June 3, 2021

TABLE OF CONTENTS

LIST OF ACRONYMS AND ABBREVIATIONS

BTEXN	Benzene, Toluene, Ethylbenzene, Xylene, Naphthalene
CAD	Computer Aided Design
CAP	Corrective Action Plan
CFR	Code of Federal Regulations
CPI	Consumer Price Index
CPs	Cost Proposal(s) and/or budgets
DERR	Division of Environmental Response and Remediation and/or the director
DOPL	Division of Occupational and Professional Licensing
EPA	Environmental Protection Agency
ft	Feet
GIS	Geographic Information Systems
hr	Hour
MTBE	Methyl t-butyl ether
NELAP	National Environmental Laboratory Accreditation Program
NTE	Not to Exceed
O&G	Oil and Grease
O&M	Operation and Maintenance
P-CODE	Personal Classification
P.E.	Professional Engineer
P.G.	Professional Geologist
PID	Photo-ionization Detector
PST	Petroleum Storage Tank
TPH-DRO	Total Petroleum Hydrocarbons, Diesel Range Organics
TPH-GRO	Total Petroleum Hydrocarbons, Gasoline Range Organics
TRPH	Total Recoverable Petroleum Hydrocarbons
UAC	Utah Administrative Code
UST	Underground Storage Tank and/or Aboveground Storage Tank
UT	Utah

INTRODUCTION

Refer to Utah Administrative Code (UAC) R311-200 and in Section 19-6-402 for definitions of terms used in this document.

This document has been prepared to facilitate the preparation and review of Cost Proposals (CPs) submitted by petroleum storage tank owner/operator(s) or Utah certified consultants. The forms contained herein may be requested from the Division of Environmental Response and Remediation (DERR) by calling (801) 536-4100, or downloaded from our website at https://deq.utah.gov/division-environmental-response-remediation.

The purpose of this cost guideline is to provide a mechanism for the consistent preparation and efficient review of CPs by certified consultants and by DERR staff, respectively. The document is based on data associated with previously approved CPs, published cost guideline documents utilized in several other states, and comments received from certified consultants and DERR staff.

Rates presented in this document were updated to more accurately reflect current market conditions. These considerations included: adjustments for inflation using the Consumer Price Index (CPI); currently approved certified consultant rates; current costs charged by vendors and contractors; and other state agency reimbursement programs.

The January 2021 Personnel Classifications, Requirements, and Rates Table will be updated every other calendar year to adjust for general inflation using the CPI calculator, beginning in January 2023. Updates to the Table will be published on <<DERR website>>.

This document may be revised as additional standards are established and as the DERR Underground Storage Tank (UST) Branch deems necessary.

PERSONNEL CLASSIFICATIONS, REQUIREMENTS, RATES, TASKS, AND RESPONSIBILITIES

This document is not intended to provide direction on how to conduct assessment or remediation activities. Appropriate assessment and remediation activities must be conducted at sites pursuant to the request/authorization of the DERR.

The Personnel Classifications, Requirements, and Rates Table and Personnel Classifications, Tasks, and Responsibilities Table are presented as general guidelines. DERR does not dictate how a certified consultant utilizes personnel. Please note, however, that appropriate personnel-levels and corresponding hourly rates should be utilized for corresponding tasks. For example, using Senior Project Manager level personnel for activities that are appropriate for Field Technician level personnel will result in denial of costs unless prior approval is given by the DERR.

For each task presented in a CP, the DERR will compare the proposed personnel levels of effort with guideline hours and associated costs presented in this document. The DERR understands that in some circumstances, a task may not be completed in the typical number of hours indicated in guideline tables. If a certified consultant can perform a task in less time than summarized in the applicable Guideline Tasks in Appendix A, the reduced level of effort must be proposed. However, if a certified consultant anticipates additional hours will be required to complete a particular task, **complete justification for the increased level of effort must be provided in the CP**.

Tasks must be performed pursuant to the requirements and standards stated in 40 CFR Part 280 and UAC R311-200 through R311-212.

SPECIALIZED TASKS

Some projects may require specialized tasks that are not presented in this document. Any hours, skill levels, in-house equipment, mileage, etc. may be proposed as the certified consultant deems necessary. A discussion of the task(s) and reasoning for the proposed hours/costs must be approved by the DERR.

MOBILIZATION AND DEMOBILIZATION

Use a mapping tool to calculate the mileage and time based on the fastest route required to travel from the certified consultant's office (whichever is the shortest distance or time) to the site destination. To calculate the round-trip time, multiply the time required to travel one-way by two, round up to the next 15-minute interval.

Only charges based on actual miles traveled for an individual project are eligible for reimbursement. Duplicative charges for travel time and mileage for any trip to multiple job sites where such costs are billed in total to multiple projects rather than allocated between the separate projects are ineligible for reimbursement. **Travel time for activities is reimbursed for one personnel only, unless specified in the CP or approved otherwise by the DERR.**

Personnel Classifications, Requirements, and Rates Table

January 2021

PERSONNEL CLASSIFICATION	DEGREE REQUIRED	MINIMUM LICENSE **OR** CERTIFICATION REQUIRED	MINIMUM YEARS EXPERIENCE	MAXIMUM HOURLY RATE
P100 Principal	None	None	12[1,3]	$153
P101 Senior Project Manager	Bachelor Degree[5]	Utah Certified Consultant	8[1]	$138
P102 Professional Engineer/Geologist	Bachelor Degree in Engineering or Geoscience[4]	P.E. or P.G.[4]	6[1]	$133
P103 Project Manager	Bachelor Degree[5]	Utah Certified Consultant[7]	4[1]	$107
P104 Field Scientist	Bachelor Degree[5]	Utah Certified Sampler[6]	2[1]	$92
P105 Senior Technician	Associate Degree or Licensed Tradesperson[5]	Utah Certified Sampler[6]	6[1]	$82
P106 Field Technician	None	Utah Certified Sampler[6]	0	$66
P107 Drafter	Associate Degree[5]	None	2[2]	$77
P108 PST Trust Fund Claim Specialists	None	None	2[3]	$71
P109 Administrative Assistant	None	None	2[3]	$56
P110 Technical Expert	None	None	15	As Approved[8]

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements

[2] Equivalent work-related or college level education with significant coursework in drafting or computer aided design (CAD) can be substituted for all or part of the specified experience requirements

[3] Equivalent work-related or college level education with coursework in administrative or business can be substituted for all or part of the specified experience requirements

[4] In accordance with DOPL Act 58-22 and 58-76

[5] Equivalent work-related experience as approved by the DERR

[6] Utah Sampling Certification only required if conducting sampling activities

[7] Utah Consultant Certification only required if performing Certified Consultant duties

[8] Prior approval is required from the DERR

Personnel Classifications, Tasks, and Responsibilities Table

PERSONNEL CLASSIFICATION (P-CODES)	TASKS AND RESPONSIBILITIES
PRINCIPAL (P100) Professional head of organization with authority and responsibility for conceiving and executing plans and functions of the organization, and directing a professional staff.	Expert testimony Legal strategies Depositions Review complex sites Final document review Authorize new technology Limited hours per site
SENIOR PROJECT MANAGER (P101) Responsible for managing entire projects and serves as technical expert on complex remediation projects.	Project management Direct work activities of lower level staff Client relations Development of project budget Oversight of project budget Review PST Trust Fund payment voucher packages Create and maintain field work schedule Site assessment planning Complex corrective active plan development Corrective action plan selection and design Corrective action effectiveness evaluation Final data review, analysis, and interpretation Report review Complex data interpretation Periodic site inspection Limited on-site supervision
PROFESSIONAL ENGINEER/GEOLOGIST (P102) Serves as senior technical leader for remediation projects and has developed substantial expertise in the field of practice.	Project oversight and management Review engineering plans, specifications, reports, maps, sketches, surveys, drawings, documents, and plans Review requests for proposals Complex corrective active plan development Corrective action plan selection and design Corrective action effectiveness evaluation Geological analysis Review plans, maps, documents, and reports in accordance with DOPL requirements Oversight of project regulatory compliance Complex data interpretation Limited hours per site

PERSONNEL CLASSIFICATION (P-CODES)	TASKS AND RESPONSIBILITIES
PROJECT MANAGER (P103) Performs specific specialized tasks related to environmental investigation and remediation activities.	Site reconnaissance Access agreements Field work planning Oversight of lower level staff Agency and contractor coordination Supervision of investigation and complex site work Permitting Oversight of project regulatory compliance Corrective action plan development Preliminary corrective action plan review Remedial system installation Supervision of initial and confirmation sampling activities Technical support Preliminary data review and analysis Report preparation
FIELD SCIENTIST (P104) Performs non-routine tasks related to environmental investigation and remediation activities.	Field work planning and preparation Initial and confirmation sampling activities Surveying Contractor oversight Oversight of specialized remedial system maintenance Data compilation Preparation of simple charts or graphs Waste handling
SENIOR TECHNICIAN (P105) Performs non-routine and complex assignments which may require non-standard procedures and complex instrumentation.	Specialized operation and maintenance of equipment Record, compute, and analyze test data Prepare test reports
FIELD TECHNICIAN (P106) Performs routine labor tasks related to site monitoring and remediation activities. Entry level position and works under close supervision.	Field work preparation Routine sampling activities Routine operation and maintenance of equipment Assist with surveying Well development Well abandonment and site restoration
DRAFTER (P107) Prepares project graphics with or without computer-aided programs.	Prepare project graphics CAD and GIS work Cartography Specialized drawings and maps

PERSONNEL CLASSIFICATION (P-CODES)	TASKS AND RESPONSIBILITIES
PST TRUST FUND CLAIM SPECIALIST (P108) Performs **only** PST Trust Fund related accounting services.	Accounting Verification of invoices PST Trust Fund reimbursement request preparation
ADMINISTRATIVE ASSISTANT (P109) Performs project related office and accounting services.	Accounting Verification of invoices (non-PST Trust Fund) Reimbursement request preparation (non-PST Trust Fund) Document formatting and proofing Typing and filing General secretarial
TECHNICAL EXPERT (P110) Provide expert consultancy within their area of specialism on high risk and highly complex projects.	Provide expert consultancy Innovative technology implementation Development of technical solutions Catastrophic release response Risk assessment

Note: Reimbursement of P-Codes will be according to the task(s) performed, not job title of the person performing the task(s).

Maximum Allowable Rates for Equipment Table

These are allowable rates for consultant-owned equipment and supplies when a third party vendor's invoice is not provided. Actual reasonable and customary costs, when accompanied by a vendor's invoice, are reimbursable. The combination of the daily rates or the weekly rate that results in the lesser cost will be used. If equipment is rented, rates must be based comparatively to the most cost effective rental timeframe for the expected duration of use for the equipment. Rental fees must not exceed a competitive rate.

EQUIPMENT	DAILY RATE	WEEKLY RATE
Photo-ionization Detector (PID)	$95.00	$285.00
Water Level Meter	$25.00	$75.00
Oil/Water Interface Probe	$55.00	$165.00
Water Quality Meter (pH, conductivity, temperature)	$40.00	$120.00
Dissolved Oxygen Meter	$50.00	$150.00
Peristaltic Pump (includes decontamination materials)	$30.00	$90.00
Hand Auger	$25.00	$75.00
Survey Equipment (theodolite and rod)	$50.00	$150.00
Sampling Supplies	$25.00	$100.00
Traffic Safety Equipment	$15.00	$60.00
Bailer (each)	(unweighted) $9.00 (weighted) $11.00	
55-Gallon Drum (each)	$50.00	
Tubing (<1/2 in vinyl or nylon)	$0.50/ft	

QUOTE AND BID REQUIREMENTS

Laboratory analytical costs and items listed on the Maximum Allowable Rates for Equipment Table are exempt from the quote and bid requirements.

For any non- certified consultant services of equipment purchases that exceed $1,000.00 but are less than $5,000.00, a minimum of two quotes must be submitted on the Quotes for Small Purchases Form to document price competition. Forms should be attached to the associated CP.

A minimum of three valid, written, signed bids must be evaluated by the certified consultant for any non-certified consultant services or equipment purchases that exceed $5,000.00. Each contractor's bid must be submitted on the appropriate Bid Form to ensure all bids can be evaluated and compared using the same criteria. A bid must be signed by both the contractor and the certified consultant certifying the integrity of the submitted bid to be considered valid. The Bid Form should be attached to the associated CP.

Special Note: Under the Architect and Engineering Contract, any construction activities must follow requirements specified in UAC R33 Purchasing Procurement Rules.

A valid bid is one in which the contractor or vendor provides a price quote for the services solicited and acknowledges that they are appropriately licensed and can perform the task and/or supply the materials in the time frame requested. In most cases it may be necessary to request bids from more than three contractors in order to receive three valid bids. Notification from a contractor that they cannot or do not wish to provide a bid does not constitute receipt of a valid bid.

Please note, a single invoice of greater than $5,000.00 shall not be split into multiple invoices totaling less than $5,000.00 each to avoid the bidding process requirements. Additionally, the requirements of the bidding process cannot be circumvented by requesting an amount of $5,000.00 or less, with an invoice greater than $5,000.00.

EMERGENCY ABATEMENT ACTIVITIES

Emergency abatement activities include situations that pose immediate threats of impact to human health, safety, and/or the environment, as concurred with by the DERR. Emergency abatement activities do not require CPs and are exempt from the quote and bid requirements, however, **approval is required by the DERR prior to implementation**.

Maximum Allowable Rates for Laboratory Services Table

These are allowable rates for NELAP certified laboratory services including costs for containers, packaging, shipping, and disposal. Analytical tests will be reimbursed at invoiced rate not to exceed the maximum allowable rate.

MATRIX	ANALYSIS	METHOD	MAXIMUM ALLOWABLE RATE
Soil	MTBE, BTEXN, TPH-GRO, TPH-DRO, TPH-GRO/DRO fractionation, TRPH, O&G	EPA 8015[1]	$50.00
		EPA 8015[1], 8260[2,3]	$85.00
		EPA 8260[2,3]	$45.00
		EPA 8260 (full VOCs)[2,3]	$100.00
		EPA 8270 (fractionation)	$135.00
		EPA 1664[1]	$65.00
Water	MTBE, BTEXN, TPH-GRO, TPH-DRO, TPH-GRO/DRO fractionation, TRPH, O&G	EPA 8015[1]	$50.00
		EPA 8015[1], 8260[3]	$85.00
		EPA 8260[3]	$45.00
		EPA 8260 (full VOCs) [3]	$100.00
		EPA 8270 (fractionation)	$135.00
		EPA 1664[1]	$65.00

[1] Addition of Silica Gel Treatment increases maximum allowable rate by $5.00

[2] Use of alternate Method 5035 does not increase maximum allowable rate

[3] Addition of TPH-GRO fractionation does not increase maximum allowable rate

ALLOWABLE COSTS

Allowable costs are those costs and activities which arise directly from the performance of eligible work deemed to be reasonable, customary, and legitimate. Allowable costs include, but are not limited to, the following:

- Abatement of immediate threats of impact to public health, safety, and/or the environment
- Identification and testing of affected or potentially affected drinking water sources
- Temporary provision of water supply utilized specifically for domestic consumption
- Temporary relocation of utility structures when necessary to the performance of corrective action
- The fair market value of use to property outside of the facility boundaries where such access is necessary for the performance of corrective action
- Supplies and materials directly associated with the project
    - Prices must be verified by the original vendor's receipt or invoice
- Postage for commercial services where a receipt is provided
- Mileage at the rates allowed by the IRS for cars and light trucks
    - For heavier vehicles with special equipment, such as drill rigs, actual expenses can be used (i.e., storage, fuel, insurance, licensing, repairs and maintenance, rental fees)
    - Documentation for these expenses is required
- Lodging at actual cost unless clearly excessive under the circumstances
    - Accommodations where no receipt is available will be reimbursed at the rate of $20.00 per day
    - Documentation of employee name and dates is required
- Meals at a per diem rate will be reimbursed in accordance with R25-7 reimbursement for meals
    - Documentation of employee name, dates, and **times** (departure and return) must be included when requesting reimbursement
    - Meal receipts are not required
- Costs as approved the DERR on a case-by-case basis if they are determined to reduce the impact or potential impact of contamination on the public health or the environment, be cost effective, and technologically feasible

Special Note: Owner/operator(s) may be eligible to receive reimbursement if the work constitutes physical and economic benefit to site activities (i.e., operating equipment, bailing wells, restoration, etc.). Reimbursement will be made for the number of hours approved in the work plan, at the appropriate labor rate category.

INELIGIBLE COSTS

Ineligible costs are those costs and activities which are not deemed to be reasonable, customary, and legitimate; and are therefore ineligible for reimbursement under the DERR UST Program. Ineligible costs include, but are not limited to, the following:

- Environmental site assessments or audits performed as a requirement of financial transactions, potential property purchases, title transfers, or when not specifically approved by the DERR
- Costs of upgrading or improving a site beyond those expenses incurred as a necessary part of investigation or remedial action
- Demolition or repair of buildings, unless it can be demonstrated that it would be more cost effective than performing a cleanup without the demolition or repair
- Expenses related to UST system compliance and/or upgrades
- Expenses related to UST system closure, with the exception of product removal from a tank associated with an emergency abatement action
- Costs associated with goods or services provided by out-of-state suppliers when similar goods or services are available locally
- Activities not conducted in compliance with applicable state and federal environmental laws and regulations, including those relating to the transport and disposal of waste
- Time, materials, and laboratory costs for samples collected by non-certified personnel
- Re-usable equipment and small hand or power tools (i.e., tape measures, tool boxes, buckets, saw blades, and Level D personal protective equipment)
- Travel to and from the state and lodging and meals along the Wasatch Front for contractors not based in Utah
    - If the required contractor skill or knowledge is not available in the state, prior approval is required from the DERR
- Rental vehicles except at the established IRS mileage rate
- Legal fees and expenses
- Costs of compiling and storing records
- Loss of business revenues (business interruption)
- Airfare
- Company's general overhead operating costs

Special Note: Owner/operator(s) will not be eligible to receive reimbursement for work that does not constitutes a physical or economic benefit to site activities (i.e., administrative and project management work, oversight, report review, meetings, travel, etc.).

AMENDMENTS

A CP amendment must be approved by the DERR if a scope of work is expected to incur additional expenses. A CP amendment must clearly identify the applicable line item(s) cost. Amendments must include descriptions of and justification for the additional activities. If additional time is necessary to complete field activities, the certified consultant must use their judgment to complete the task as expeditiously and cost effectively as possible. The certified consultant should be in communication with the DERR during field activities to discuss additional work scope.

Circumstances that may justify an amendment include, but are not limited to:

- Drilling conditions of extreme difficulty
- Developing or purging wells with extremely slow recharge rates
- Additional field exploration activities to characterize a site
- Implementation of innovative assessment and remediation technologies
- Design, installation and/or maintenance of a complex remediation system
- Additional corrective action to meet cleanup standards
- Additional action based on field or laboratory data

APPENDIX A

Guideline Tasks

1. INITIAL SUBSURFACE INVESTIGATION

1.1. Boring and/or Well Installation

a. Work Plan Preparation: Not to Exceed (NTE) $2,000.00

b. Field Preparation Activities: Applicable for P104
   - 2 hours (includes travel time to pick up sampling supplies)

c. Oversight Activities: Applicable for P103

d. Sampling Activities: Applicable for P104/*P106**
   **P106 is applicable for any additional personnel approved for sampling activities*

e. Report Preparation (see Subsurface Investigation Report Template, Appendix B):

P-CODE	TASK DESCRIPTION
P101	Final document review
P102	Report review
P103	Report preparation (preliminary data review, analysis)
P104	Data compilation (tables, charts, graphs)
P107	Map preparation
P109	Document formatting and proofing

Hour(s) per Task NTE approved Work Plan

2. ADDITIONAL SUBSURFACE INVESTIGATION

2.1. Boring and/or Well Installation

a. Work Plan Preparation: NTE $1,000.00

b. Field Preparation Activities: Applicable for P104
   - 2 hours (includes travel time to pick up sampling supplies)

c. Oversight Activities: Applicable for P103*/P104
   **P103 is only applicable for significant or critical oversight activities*

d. Sampling Activities: Applicable for P104/*P106**
   **P106 is applicable for any additional personnel approved for sampling activities*

e. Report Preparation (see Subsurface Investigation Report Template, Appendix B):

P-CODE	TASK DESCRIPTION
P101	Final document review
P102	Report review
P103	Report preparation (preliminary data review, analysis)
P104	Data compilation (tables, charts, graphs)
P107	Map preparation
P109	Document formatting and proofing

Hour(s) per Task NTE approved Work Plan

3. INITIAL VAPOR SAMPLING

3.1. Subsurface, Subslab, Indoor, and/or Outdoor (ambient) Monitoring Point Installation

a. Work Plan Preparation: NTE $1,000.00

b. Field Preparation Activities: Applicable for P104
   - 2 hours (includes travel time to pick up and/or ship sampling supplies)

c. Oversight Activities: Applicable for P103*/P104
   **P103 is only applicable for significant or critical oversight activities*

d. Sampling Activities:

SAMPLING METHOD	P-CODE	HOUR(s)
Canister Sampler (SUMMA®)	P104	1 hr/location
Vapor Sampler (Tedlar®)	P104	0.25 hr/location
Flux Chamber	P104	0.25 hr/location*

The following activities are included in the total hours listed in the table above:
- Equipment set-up
- Field measurement collection
- Sample collection*
- Sample preparation and documentation for laboratory

* *Total hours **do not** include time for duration of test*

e. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	3	Final document review
P102	3	Report review
P103	12 (≤4 locations) +0.5/location (>4 locations)	Report preparation (preliminary data review, analysis)
P104	6 (≤4 locations) +0.5/location (>4 locations)	Data compilation (tables, charts, graphs)
P107	2	Map preparation
P109	1	Document formatting and proofing

4. ADDITIONAL VAPOR SAMPLING

4.1. Subsurface, Subslab, Indoor, and/or Outdoor (ambient) Monitoring Point Installation

a. Work Plan Preparation: NTE $650.00

b. Field Preparation Activities: Applicable for P106
   - 2 hours (includes travel time to pick up and/or ship sampling supplies)

c. Oversight Activities: Applicable for P104

d. Sampling Activities:

SAMPLING METHOD	P-CODE	HOUR(s)
Canister Sampler (SUMMA®)	P104	1 hr/location
Vapor Sampler (Tedlar®)	P106	0.25 hr/location
Flux Chamber	P106	0.25 hr/location*

The following activities are included in the total hours listed in the table above:
- Equipment set-up
- Field measurement collection
- Sample collection*
- Sample preparation and documentation for laboratory

* *Total hours **do not** include time for duration of test*

e. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	2	Final document review
*P102**	2	Report review (technical sampling report)
P103	8 (≤4 locations) +0.25/location (>4 locations)	Report preparation (preliminary data review, analysis)
P104	4 (≤4 locations) +0.25/location (>4 locations)	Data compilation (tables, charts, graphs)
P107	2	Map preparation
P109	1	Document formatting and proofing

**P102 is only applicable for review of a sampling report indicating significant site conditions (i.e., progression to corrective action, MNA, NFA)*

5. CORRECTIVE ACTION PLAN (CAP)

5.1. CAP Preparation and Implementation

a. Work Plan Preparation: NTE $1,500.00
   - Includes CAP meeting (if applicable)

b. Public Notification Activities: Applicable for P103
   - Includes preparation and distribution

   **Refer to DERR Corrective Action Plan Guides, dated 2017*

c. Field Preparation Activities: Applicable for P104
   - 2 hours (includes travel time to pick up sampling supplies)

d. Subcontractor Oversight Activities: Applicable for *P103**/P104

   **P103 is only applicable for significant or critical oversight activities*

e. Sampling Activities: Applicable for P104/*P106**

   **P106 is applicable for any additional personnel approved for sampling activities*

f. Report Preparation:

P-CODE	TASK DESCRIPTION
P101	Final document review
P102	Report review
P103	Report preparation (preliminary data review, analysis)
P104	Data compilation (tables, charts, graphs) (see Data Tables, Appendix C)
P107	Map preparation
P109	Document formatting and proofing

Hour(s) per Task NTE approved Work Plan

6. INITIAL GROUNDWATER SAMPLING

6.1. Purge (via bailer or pump)

a. Work Plan Preparation: NTE $1,000.00

b. Field Preparation Activities: Applicable for P104
- 2 hours (includes travel time to pick up sampling supplies)

c. Sampling Activities: Applicable for P104/*P106**

**P106 is applicable for any additional personnel approved for sampling activities*

TOTAL WELL DEPTH	1 INCH WELL	2 INCH WELL	4 INCH WELL
≤30 ft	0.5 hr/well	1 hr/well	1.5 hr/well
>30 ft and ≤60 ft	1 hr/well	1.5 hr/well	2 hr/well
>60 ft	1.5 hr/well	2 hr/well	2.5 hr/well

The following activities are included in the total hours listed in the table above*:
- Equipment set-up and decontamination
- Field measurement collection (see Field Data Information Sheet, Appendix C)
- Groundwater monitoring well purging and recovery
- Sample collection
- Sample preparation and documentation for laboratory

Total hours **do not include time for development of wells*

d. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	2	Final document review
P102	2	Report review
P103	12 (≤10 wells) +0.5/well (>10 wells)	Report preparation (preliminary data review, analysis)
P104	6 (≤10 wells) +0.5/well (>10 wells)	Data compilation (tables, charts, graphs) (see Data Tables, Appendix C)
P107	2	Map preparation
P109	1	Document formatting and proofing

7. ADDITIONAL GROUNDWATER SAMPLING

7.1. Purge (via bailer or pump)

e. Work Plan Preparation: NTE $650.00

f. Field Preparation Activities: Applicable for P104
- 2 hours (includes travel time to pick up sampling supplies)

g. Sampling Activities: Applicable for P104/*P106**

**P106 is applicable for any additional personnel approved for sampling activities*

TOTAL WELL DEPTH	1 INCH WELL	2 INCH WELL	4 INCH WELL
≤30 ft	0.5 hr/well	1 hr/well	1.5 hr/well
>30 ft and ≤60 ft	1 hr/well	1.5 hr/well	2 hr/well
>60 ft	1.5 hr/well	2 hr/well	2.5 hr/well

The following activities are included in the total hours listed in the table above:
- Equipment set-up and decontamination
- Field measurement collection (see Field Data Information Sheet, Appendix C)
- Groundwater monitoring well purging and recovery
- Sample collection
- Sample preparation and documentation for laboratory

d. Report Preparation:

P-CODE	HOUR(S)	TASK DESCRIPTION
P101	1	Final document review
*P102**	2	Report review (technical sampling report)
P103	8 (≤10 wells) +0.25/well (>10 wells)	Report preparation (preliminary data review, analysis)
P104	4 (≤10 wells) +0.25/well (>10 wells)	Data compilation (tables, charts, graphs) (see Data Tables, Appendix C)
P107	2	Map preparation
P109	1	Document formatting and proofing

**P102 is only applicable for review of a sampling report indicating significant site conditions (i.e., progression to corrective action, MNA, NFA)*

7.2. No Purge (prior DERR approval required)

a. Work Plan Preparation: NTE $650.00

b. Field Preparation Activities: Applicable for P106
   - 2 hours (includes travel time to pick up sampling supplies)

c. Sampling Activities: Applicable for P106

TOTAL WELL DEPTH	1 INCH WELL	2 INCH WELL	4 INCH WELL
≤30 ft	0.25 hr/well	0.25 hr/well	0.5 hr/well
>30 ft and ≤60 ft	0.5 hr/well	0.5 hr/well	0.75 hr/well
>60 ft	0.75 hr/well	0.75 hr/well	1 hr/well

The following activities are included in the total hours listed in the table above:
- Equipment set-up and decontamination
- Field measurement collection
- Sample collection
- Sample preparation and documentation for laboratory

d. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	1	Report review
P103	6 (≤10 wells) +0.25/well (>10 wells)	Report preparation (preliminary data review, analysis)
P104	3 (≤10 wells) +0.25/well (>10 wells)	Data compilation (tables, charts, graphs) (see Data Tables, Appendix C)
P107	2	Map preparation
P109	1	Document formatting and proofing

7.3. Gauge Only

a. Work Plan Preparation: NTE $650.00

b. Field Preparation Activities: Applicable for P106
   - 0.5 hour

c. Sampling Activities: Applicable for P106

TOTAL WELL DEPTH	1 INCH WELL	2 INCH WELL	4 INCH WELL
≤30 ft	0.25 hr/well	0.25 hr/well	0.25 hr/well
>30 ft and ≤60 ft	0.25 hr/well	0.25 hr/well	0.25 hr/well
>60 ft	0.5 hr/well	0.5 hr/well	0.5 hr/well

The following activities are included in the total hours listed in the table above:
- Equipment set-up and decontamination
- Field measurement collection

d. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	1	Report review
P103	4 (≤10 wells) +0.25/well (>10 wells)	Report preparation (preliminary data review, analysis)
P104	2 (≤10 wells) +0.25/well (>10 wells)	Data compilation (tables, charts, graphs) (see Data Tables, Appendix C)
P107	2	Map preparation
P109	1	Document formatting and proofing

8. WELL ABANDONMENT AND SITE RESTORATION

8.1. Wells >30 Feet

a. Work Plan Preparation: NTE $1,000.00

b. Field Preparation Activities: Applicable for P104
- 0.5 hour

c. Abandonment and Restoration Activities: Applicable for P104*/P106**
- Refer to Utah Division of Water Rights current rules

**P106 is applicable for any additional personnel approved for sampling activities*

d. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	1	Final document review
P103	3	Report preparation
P104	1 hr/well	Data compilation (abandonment logs, photos)
P107	2	Map preparation
P109	1	Document formatting and proofing

Additional costs may be proposed in the Work Plan if a remediation system is in place

8.2. Wells ≤30 Feet

a. Work Plan Preparation: NTE $650.00

b. Field Preparation Activities: Applicable for P106
   - 2 hours

c. Abandonment and Restoration Activities: Applicable for P106

TOTAL WELL DEPTH	1 INCH WELL	2 INCH WELL	4 INCH WELL
≤30 ft	0.75 hr/well	1 hr/well	1.5 hr/well

The following activities are included in the total hours listed in the table above:
- Equipment set-up
- Casing plugging
- Monument removal (when applicable)
- Site restoration

d. Report Preparation:

P-CODE	HOUR(s)	TASK DESCRIPTION
P101	1	Final document review
P103	2	Report preparation
P104	0.5 hr/well	Data compilation (abandonment logs, photos)
P107	2	Map preparation
P109	1	Document formatting and proofing

Additional costs may be proposed in the Work Plan if a remediation system is in place

NOT TO EXCEED COSTS

ACTIVITY	NOT TO EXCEED COST
Initial Health and Safety Plan	$400.00
Additional Health and Safety Plan	$200.00
On-Site Property Access Agreement	$100.00
High Vacuum Dual Phase Extraction	$1,000.00
Remediation System O&M Progress Report	$2,000.00
Initial Environmental Covenant (complex site)	$2,000.00
Initial Environmental Covenant (simple site)	$1,000.00
Additional Environmental Covenant	$650.00
WORK PLAN PREPARATION	
Initial Subsurface Investigation	$2,000.00
Additional Subsurface Investigation	$1,000.00
Initial Vapor Sampling	$1,000.00
Additional Vapor Sampling	$650.00
Corrective Action Plan	$1,500.00
Initial Groundwater Sampling	$1,000.00
Additional Groundwater Sampling	$650.00
Well Abandonment and Site Restoration (>30 ft)	$1,000.00
Well Abandonment and Site Restoration (≤30 ft)	$650.00

APPENDIX B

DERR Access Agreement Template

ENVIRONMENTAL RESPONSE & REMEDIATION

GRANT OF ACCESS TO PROPERTY FORM

_____, is the owner (Owner) of record, title holder, or authorized agent for the record owner of certain real property located at _____, Utah (Property). Any change in Owner will require a new Grant of Access to Property Form to be filed with the Division of Environmental Response and Remediation (DERR).

The Owner hereby grants access to certified consultant, contractors, and authorized representatives of the DERR, to the Property for the following purposes:

1. To conduct investigative activities to determine the extent and degree of petroleum contamination originating from an underground and/or above ground storage tank system. This may include temporary or permanent monitoring well installation for conducting soil, groundwater, and/or vapor sampling.

2. To implement corrective action activities to address petroleum contamination which may exist on the Property.

3. Any other actions related to investigation or cleanup of petroleum contamination on the Property.

It is anticipated that the work described herein will be performed between normal business hours of operation. If it becomes necessary to perform the work at other times, sufficient advance notice (24 to 72 hours) shall be provided to the Owner prior to entering the Property.

This grant of access shall remain in effect until investigation, corrective action, and any other related activities are complete on the Property.

By granting access, the Owner makes no admission of liability or responsibility for any petroleum contamination which may be found on the Property.

Owner's Printed Name: _____

Owner's Signature: _____

Date: _____

APPENDIX C

Subsurface Investigation Report Template

A Subsurface Investigation Report submitted to the DERR shall include, at a minimum, the following elements as applicable to the scope of work conducted at the facility:

INTRODUCTION

1. Provide facility history including tank information (number, size, and contents of all current and former USTs), date release reported to the DERR, estimated quantity of release, cause of release, and status of any other releases at the facility
2. Provide current facility name and document use (indicate if facility is potential redevelopment property)
3. Describe regional geology and hydrogeology

RECEPTOR SURVEY AND SITE DATA

1. Identify potential receptors as defined by the UST Facility Cleanup Standards (i.e., buildings, property boundaries, utilities, water wells, and surface water)
2. Document current property use and adjacent land use (residential, commercial, agricultural, industrial, other)
3. Identify any UST site(s) within a 500 ft radius of the subject site and provide applicable Facility ID(s) and Release ID(s)
4. Describe site-specific geology and hydrogeology

SOIL DATA

1. Describe primary soil types and field screening results
2. Describe field screening procedure
3. Describe soil sample collection and preservation methodology

MONITORING WELL DATA

1. Describe monitoring well installation methodology
2. Describe well development procedure, volume of development water generated, and waste water disposal handling
3. Provide justification for monitoring well locations

GROUNDWATER DATA

1. Describe groundwater sampling methodology and sampling date(s)
2. Describe purging methodology and provide an explanation for any incomplete purging
3. Provide measured thickness of any free product encountered and note color of product

CONCLUSIONS AND RECOMMENDATIONS

1. Discuss results of investigation and methodology used
2. Describe aquifer characteristics including hydraulic gradient, conductivity, seepage velocity, etc.
3. Discuss results of fate and transport modeling and identify all assumptions (present input parameters in tabular format)
4. Discuss site conceptual model exposure pathway evaluation results, and data requirements for any selected pathway evaluation
5. Include recommendations for further action (additional investigation, remediation, monitoring, site closure, etc.)

TABLES

1. List the following general information in tabular form: UST facility name, facility ID, release ID, address, and phone number; owner/operator's name, address, and phone number; property owner's name, address, and phone number; certified consultant' name, certification number, company address, and phone number; certified sampler's name, certification number, company address, and phone number; driller's name, certification number, company address, and phone number; NELAP certified laboratory name, certification number, address, and phone number
2. Well Construction Data Table (see template in Appendix D)
3. Soil Analytical Data Table (see template in Appendix D)
4. Groundwater Analytical and Elevation Data Table (see template in Appendix D)
5. Site Conceptual Model Data Table (see template in Appendix D)

FIGURES

1. Topographic Map - provide a copy of the relevant portion of a USGS 7.5 min topographic map showing site location and locations of all water wells and surface water within 1,000 feet of the site (include bar scale and North arrow)
2. Site Map - include the following information:
    - Location of property boundaries
    - Streets or highways (indicate names and numbers)
    - Location of on-site and adjacent buildings
    - Location of all existing and former USTs and associated lines, fill ports, and dispensers
    - Underground and aboveground utilities (sewer, water, gas, phone, electric, storm drains, etc.)
    - Location of any potential receptors
    - All sampling locations (current and historical)
    - Any excavated area (indicate length, width, and depth)
    - Bar scale
    - North arrow
3. Isoconcentration Maps - depict estimated extent of contamination in soil and groundwater, using separate maps for each medium and constituent of concern
4. Groundwater Elevation Map - indicate water level elevations for each monitoring well, showing groundwater flow direction

    Note: Exercise great care using computer contouring programs (e.g., Surfer®); any unusual potentiometric features depicted on the map (e.g., sinks, mounds, abnormally steep gradients, etc.) must be explained
5. Geologic Cross Sections - include two cross sections showing lithology, hydrology, and stratigraphy of the site, and estimated extent of contamination in soil and groundwater. Cross sections should intersect at a 90-degree angle. One cross section should include source area and go down gradient through as many wells as practicable with the highest concentrations

APPENDICES

1. Field Data Information Sheet (see template in Appendix D)
2. Laboratory Analytical Report
3. Soil Boring/Field Screening Logs
4. Well Completion Logs and Well Development Logs
5. Aquifer Evaluation Summary Forms Data, Graphs, Equations
6. Disposal Manifests
7. Fate and Transport Modeling Input, Output, and Assumptions
8. Copy of Grant of Access to Property Form (see template in Appendix B)

APPENDIX D

Data Table Templates

Facility Name: _____

Facility ID: _____

Release ID: _____

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE & REMEDIATION

WELL CONSTRUCTION DATA TABLE									
Well ID	Date Installed	Casing Diameter (in)	Screened Interval (ft bgs)	Measured Well Depth (ft bgs)	Top of Casing Elevation* (ft)	Depth to Water (ft bgs)	Groundwater Elevation** (ft)	Northing***	Easting***

KEY:
in = inches
ft bgs = feet below ground surface
* = reference point for elevation measurements , assumed elevation: ft
** = if free product is present in a well, groundwater elevation is calculated by: [Top of Casing Elevation - Depth to Water] + [free product thickness x 0.8581]
*** = location must be sufficiently accurate and precise to allow easy recovery of lost or damaged wells

Facility Name: _____

Facility ID: _____

Release ID: _____

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE & REMEDIATION

SOIL ANALYTICAL DATA TABLE (mg/kg)											
Sample ID	Sample Date	Collection Depth (ft bgs)	Benzene	Toluene	Ethyl-benzene	Total Xylenes	Napht.	MTBE	TPH-GRO	TPH-DRO	O&G/ TRPH*
			Analytical Method ( )							( )	( )
Initial Screening Levels			**0.2**	**9**	**5**	**142**	**51**	**0.3**	**150**	**500**	**1000**
Tier 1 Screening Levels			**0.9**	**25**	**23**	**142**	**51**	**0.3**	**1500**	**5000**	**10000**

KEY:
mg/kg = milligrams per kilogram
ft bgs = feet below ground surface
Napht. = naphthalene
MTBE = methyl tert-butyl ether
TPH-GRO = total petroleum hydrocarbons-gasoline range organics
TPH-DRO = total petroleum hydrocarbons-diesel range organics
O&G = oil & grease
TRPH = total recoverable petroleum hydrocarbons
* = indicate which constituent analyzed
BOLD value exceeds Initial Screening Level
BOLD value exceeds Tier 1 Screening Level

Facility Name: _____

Facility ID: _____

Release ID: _____

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE & REMEDIATION

GROUNDWATER ANALYTICAL AND ELEVATION DATA TABLE (mg/L)														
Sample ID	Sample Date	Benzene	Toluene	Ethyl-benzene	Total Xylenes	Napht.	MTBE	TPH-GRO	TPH-DRO	O&G/ TRPH*	Depth to Water (ft btoc)	Free Product** (ft)	Water Table Elevation (ft)
		Analytical Method ( )							( )	( )			
Initial Screening Levels		**0.005**	**1**	**0.7**	**10**	**0.7**	**0.2**	**1**	**1**	**10**			
Tier 1 Screening Levels		**0.3**	**3**	**4**	**10**	**0.7**	**0.2**	**10**	**10**	**10**			

KEY:
mg/L = milligrams per liter
Napht. = naphthalene
MTBE = methyl tert-butyl ether
TPH-GRO = total petroleum hydrocarbons-gasoline range organics
TPH-DRO = total petroleum hydrocarbons-diesel range organics
O&G = oil & grease
TRPH = total recoverable petroleum hydrocarbons
* = indicate which constituent analyzed
ft btoc = feet below top of casing
** = measured free product thickness
BOLD value exceeds Initial Screening Level
BOLD value exceeds Tier 1 Screening Level

Facility Name: _____

Facility ID: _____

Release ID: _____

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE & REMEDIATION

SITE CONCEPTUAL MODEL DATA TABLE					
Media	Exposure Pathway	Pathway Selected for Evaluation? (Yes or No)		Explanation for Selection of Non-Selection	Data Requirements (IF pathway selected)
Air	Inhalation	Yes	No		
	Explosion Hazard	Yes	No		
Surface Water	Ingestion	Yes	No		
	Dermal Contact	Yes	No		
	Inhalation	Yes	No		
Groundwater	Ingestion	Yes	No		
	Dermal Contact	Yes	No		
	Inhalation	Yes	No		
Surface Soil	Ingestion	Yes	No		
	Dermal Contact	Yes	No		
	Inhalation	Yes	No		
	Leaching to Groundwater	Yes	No		
Subsurface Soil	Ingestion	Yes	No		
	Dermal Contact	Yes	No		
	Inhalation	Yes	No		
	Leaching to Groundwater	Yes	No		

UTAH DEPARTMENT of ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE & REMEDIATION

FIELD DATA INFORMATION SHEET – GROUNDWATER SAMPLING LOG

SITE INFORMATION

Facility Name & Address:		Facility ID:
Release ID:	Date(s) in Field:	DERR Project Manager:

WELL SAMPLING INFORMATION

Well ID	Casing Diameter (in)	Measured Well Depth (ft bgs)	Screened Interval (ft bgs)	Depth to Product (ft bgs)	Depth to Water (ft bgs)	Length of Water Column (ft bgs)	Calculated Purge Vol. (gal)*	Vol. Purged (gal)**	D.O. (mg/L)	Temp (°C)	Specific Conductivity (µmohs/cm)	pH (SU)	Turbidity (NTU)	Purge Method

Notes *(e.g., odor, sheen, slow recharge, well dry, etc.)*:

* *Well Dia. (in)* 2" | 3" | 4" | 6"
Vol. (gal/ft) 0.163 | 0.367 | 0.652 | 1.468

*** If less than 3 casing vol. purged, provide explanation in Notes*

Certified Sampler Signature:

Printed Name:

Certification Number & Expiration:

APPENDIX E

Quote and Bid Forms

ENVIRONMENTAL RESPONSE & REMEDIATION

QUOTES FOR SMALL PURCHASES FORM

For purchases costing more than $1,000 with a maximum total of $5,000, a certified consultant shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the item(s) from the responsible vendor offering the lowest quote that meets the specifications. Price quotes can be obtained by email, fax, letter, or phone, and must be from a representative of an established, viable vendor. Email and other written quotes should be attached to the form in accordance with Administrative Services, Purchasing and General Services Rule R33-5-107.

CONSULTING FIRM:	**PURCHASER'S NAME:**

	VENDOR #1	VENDOR #2	VENDOR #3
VENDOR NAME:			
SALES PERSON:			
E-MAIL ADDRESS:			
PHONE NUMBER:			
ADDRESS:			
DATE OF QUOTE:			

QUANTITY	UNIT	DESCRIPTION OF PRODUCT(S)/SERVICE(S) TO BE PURCHASED	VENDOR #1 QUOTE*	VENDOR #2 QUOTE*	VENDOR #3 QUOTE*
(To update TOTAL, right click in TOTAL column and select Update Field)		**TOTAL:**	**$ 0.00**	**$ 0.00**	**$ 0.00**
**If delivery cost is not included in provided quote, add delivery cost as additional purchase item, as applicable.*					

COMMENTS:			
SIGNATURE:		**DATE:**	

ENVIRONMENTAL RESPONSE & REMEDIATION

GENERAL BID FORM

For purchases costing more than $5,000, a certified consultant shall obtain and evaluate a minimum of three valid, written, signed bids. This Bid Form should be attached to the associated Cost Proposal for DERR approval. Bids shall include all labor, materials, tipping fees, equipment, and cleanup as applicable.

CONSULTING FIRM:	CONTACT PERSON:
SITE NAME:	SITE LOCATION:

CONTRACTING COMPANY:	CONTACT PERSON:
ADDRESS:	DATE OF BID:
PHONE NUMBER:	EXPIRATION DATE OF BID:

SCOPE OF WORK:

DESCRIPTION	QUANTITY	UNIT	COST PER UNIT	UNIT TOTAL
(To update TOTAL, right click in TOTAL column and select Update Field)			**TOTAL COST ESTIMATE:**	**$ 0.00**

The Contractor hereby certifies the truthfulness and accuracy of the bid information provided. Failure to sign this form will result in the rejection of this bid.

Submitted by (Contracting Company): _____

Submitted by (Signature): _____

Submitted on (Date): _____

The Utah certified consultant hereby certifies the integrity of the submitted bid and that the information provided on this form is complete. Failure to sign this form will result in the rejection of this bid.

Reviewed by (Consultant Signature): _____

Reviewed on (Date): _____

ENVIRONMENTAL RESPONSE & REMEDIATION

EXCAVATION BID FORM

For purchases costing more than $5,000, a certified consultant shall obtain and evaluate a minimum of three valid, written, signed bids. This Bid Form should be attached to the associated Cost Proposal for DERR approval. Bids shall include all labor, materials, tipping fees, equipment, and cleanup as applicable.

CONSULTING FIRM:	CONTACT PERSON:
SITE NAME:	SITE LOCATION:

CONTRACTING COMPANY:	CONTACT PERSON:
ADDRESS:	DATE OF BID:
PHONE NUMBER:	EXPIRATION DATE OF BID:

SCOPE OF WORK:

DESCRIPTION	QUANTITY	UNIT	COST PER UNIT	UNIT TOTAL
Mobilization and demobilization		job		
Private utility location		job		
Site access control (fencing)		ft		
Traffic control (barricades and signage)		job		
Remove, transport, and dispose of site debris		yd^3		
Excavate, transport, and dispose of unimpacted soil		yd^3		
Excavate, transport, and dispose of impacted soil		yd^3		
Excavate and stockpile soil for re-use as backfill		yd^3		
Excavate soil for landfarming		yd^3		
Place and compact stockpiled soil		yd^3		
Deliver, place, and compact appropriate fill (includes geotextile fabric)		yd^3		
Deliver, place, and compact road base to grade		yd^3		
Resurface excavation area		ft^2		

(To update TOTAL, right click in TOTAL column and select Update Field)		**TOTAL COST ESTIMATE:**		**$ 0.00**

The Contractor hereby certifies the truthfulness and accuracy of the bid information provided. Failure to sign this form will result in the rejection of this bid.

Submitted by (Contracting Company): _____

Submitted by (Signature): _____

Submitted on (Date): _____

The Utah certified consultant hereby certifies the integrity of the submitted bid and that the information provided on this form is complete. Failure to sign this form will result in the rejection of this bid.

Reviewed by (Consultant Signature): _____

Reviewed on (Date): _____

ENVIRONMENTAL RESPONSE & REMEDIATION

DRILLING BID FORM

For purchases costing more than $5,000, a certified consultant shall obtain and evaluate a minimum of three valid, written, signed bids. This Bid Form should be attached to the associated Cost Proposal for DERR approval. Bids shall include all labor, materials, tipping fees, equipment, and cleanup as applicable.

CONSULTING FIRM:	CONTACT PERSON:
SITE NAME:	SITE LOCATION:

CONTRACTING COMPANY:	CONTACT PERSON:
ADDRESS:	DATE OF BID:
PHONE NUMBER:	EXPIRATION DATE OF BID:

SCOPE OF WORK:

DRILL RIG TYPE:	
DRILL CONFIGURATION:	

DESCRIPTION	QUANTITY	UNIT	COST PER UNIT	UNIT TOTAL
Mobilization and demobilization		job		
Private utility location		job		
Site access control (fencing)		ft		
Traffic control (barricades and signage)		job		
Daylighting (hand auger)		each		
Daylighting (water knife, vac truck)		each		
Drums		each		
Boring installation, sampling, and abandonment		each		
2-in well installation, sampling, and completion		each		
4-in well installation, sampling, and completion		each		
Well development		each		
Decontamination		each		

(To update TOTAL, right click in TOTAL column and select Update Field)			**TOTAL COST ESTIMATE:**	**$ 0.00**

The Contractor hereby certifies the truthfulness and accuracy of the bid information provided. Failure to sign this form will result in the rejection of this bid.

Submitted by (Contracting Company): _____

Submitted by (Signature): _____

Submitted on (Date): _____

The Utah certified consultant hereby certifies the integrity of the submitted bid and that the information provided on this form is complete. Failure to sign this form will result in the rejection of this bid.

Reviewed by (Consultant Signature): _____

Reviewed on (Date): _____

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Clean Harbors Aragonite, LLC (CHA)
Proposed Stipulation and Consent Order No. 2004048
June 10, 2021

What is the issue before the Board?	This is a proposed Stipulation and Consent Order (SCO), No. 2004048, to resolve Notice of Violation (NOV) No. 2001004, issued to CHA on April 8, 2020.
What is the historical background or context for this issue?	The NOV was based on information documented during an inspection at the facility on September 9-26, 2019, and several self-reported notices of non-compliance for the time period of October 1, 2018 to September 30, 2019 (fiscal year 2019). With the exception of Violation Number 7 from NOV (relating to generic profiles), the violations have been resolved. Due to overlap with a current EPA enforcement action, we are postponing enforcement of Violation Number 7 from NOV. The SCO includes a penalty of $80,630.00. Copies of the NOV, the SCO, and the penalty narrative worksheet are included in this Board packet.
What is the governing statutory or regulatory citation?	§19-6-104 of the Utah Solid and Hazardous Waste Act authorizes the Board to issue orders and approve or disapprove settlements negotiated by the Director with a civil penalty over $25,000.
Is Board action required?	No. A 30-day public comment period is currently underway. Following the comment period, this matter will be brought before the Board for action in a future meeting.
What is the Division Director's recommendation?	N/A
Where can more information be obtained?	For technical information, please contact Rick Page at (801) 536-0230. For legal information, please contact Connie Nakahara at (385) 414-0450.

DSHW-2021-007922

Attachments: DSHW-2020-000182 (Notice of Violation No. 2001004)
DSHW-2021-006004 (Stipulation and Consent Order No. 2004048)
DSHW-2020-017266 (Narrative Explanation)

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

L. Scott Baird
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Ty L. Howard
Director

April 8, 2020

William Simmons, General Manager
Clean Harbors Aragonite, LLC
P.O. Box 1339
Grantsville, UT 84029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7003 2260 0003 2353 4794

RE: Notice of Violation No. 2001004
UTD 981 552 177

Dear Mr. Simmons.:

Enclosed is **NOTICE OF VIOLATION (NOV)** Number **2001004**, based on findings documented by Division of Waste Management and Radiation Control inspectors during a compliance inspection on September 9-26, 2019.

You are hereby requested to submit to this office on or before April 28, 2020, written verification that the violations documented in the NOV have been corrected. Please include a description of the corrective actions implemented to ensure that these violations do not recur. Your response to this request will not constitute an administrative contest to the attached NOV.

You have 30 days from the date of the attached NOV to contest it in the manner and within the time period prescribed by R305-7-303 of the Utah Administrative Code.

If you have any questions, please call Rick Page at (801) 536-0230.

Sincerely,

Ty L. Howard, Director
Division of Waste Management and Radiation Control

(Over)

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144880 • Salt Lake City, UT 84114-4880
Telephone (801) 536-0200 • Fax (801) 536-0222 • T.D.D. (801) 536-4284
www.deq.utah.gov

TLH/RAP/ar

Enclosure: Notice of Violation No. 2001004

c: Jeff Coombs, EHS, Health Officer, Tooele County Health Department
Bryan Slade, Environmental Health Director, Tooele County Health Department
Annette Maxwell, U.S. EPA, Region VIII, ENF-R

---oo0oo---

In the Matter of:	:	**NOTICE OF VIOLATION**
	:	
Clean Harbors Aragonite, LLC	:	**No. 2001004**
UTD 981 552 177	:	

---oo0oo---

This **NOTICE OF VIOLATION (NOV)** is issued by the Director of the Division of Waste Management and Radiation Control pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code §19-6-101, *et seq.* The Director has authority to issue such NOTICES in accordance with Utah Code §19-6-112.

FINDINGS

1. Clean Harbors Aragonite, LLC (CHA) is a Delaware Limited Liability Company licensed to do business in the State of Utah and is a subsidiary of Clean Harbors Environmental Services, Inc., a Massachusetts corporation licensed to do business in the State of Utah.

2. CHA is a "person" as defined in Utah Code §19-1-103(4) and is subject to all applicable provisions of the Act, the Utah Administrative Code (UAC) (the Rules) and the Permit issued to CHA as owner and operator of the Aragonite facility.

3. The Aragonite facility is a commercial hazardous waste incinerator, transfer station, and storage facility located in Tooele County, Utah. CHA operates the Aragonite facility under the provisions of the State-issued Hazardous Waste Part B Permit issued on March 30, 1990, as modified (the Permit) on file with the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control (the Division). The Permit was most recently renewed and reissued on September 28, 2012.

4. CHA generates, treats, and stores listed and characteristic hazardous waste as defined by R315-261 UAC.

5. Authorized representatives of the Director conducted a hazardous waste inspection at the Aragonite facility from September 9 through September 26, 2019 (the FY2019 inspection) and documented the following findings. In addition, the CHA self-reported several non-compliance issues during the 2019 fiscal year (October 1, 2018, through September 30, 2019) (FY2019).

6. During the FY2019 inspection, the inspector(s) observed and documented that CHA failed to follow procedures specified in SOPs #003, #209, #323, #402, and #407 in the Waste Analysis Plan (WAP) in Attachment 1 of the Permit. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 1.

7. During the FY2019 inspection, the inspector(s) documented that CHA failed to accurately record waste heat content to ensure safe operation. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 2.

8. During the FY2019 inspection, the inspector(s) documented that CHA failed to timely notify the Director in writing within seven days of each emergency vent opening. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 3.

9. During the FY2019 inspection, the inspector(s) documented that CHA failed to notify the Director in writing within seven days of the baghouse bypassing. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 4.

10. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with the waste analysis procedures specified in the WAP in Attachment 1 of the Permit. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 5.

11. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with inspection procedures specified in Attachment 3 of the Permit. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 6.

12. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with personnel training procedures specified in Attachment 4 of the Permit. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 7.

13. During the FY2019 inspection, the inspector(s) documented that CHA failed to ensure the availability of decontamination equipment in time of emergency. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 8.

14. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with waste manifest requirements. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 9.

15. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with polychlorinated biphenyl (PCB) management procedures in Attachment 17 of the Permit. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 10.

16. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with storage and treatment waste management requirements. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 11.

17. During the FY2019 inspection, the inspector(s) documented that CHA failed to follow the storage time limit and notification procedures for rejected waste. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 12.

18. During the FY2019 inspection, the inspector(s) documented that CHA failed to properly label accepted containers as specified in Attachment 8 of the Permit (Waste Storage, Processing, and Tracking). The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 13.

19. During the FY2019 inspection, the inspector(s) documented that CHA failed to properly manage ignitable waste. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 14.

20. During the FY2019 inspection, the inspector(s) documented that CHA failed to properly manage incompatible waste. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 15.

21. On August 9, 2019, CHA notified the Director that on August 5, 2019, CHA discovered that it failed to unload containers from a transport vehicle within ten days of receipt. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 16.

22. During the FY2019 inspection, the inspector(s) documented that CHA stored two containers of medical waste in the aisle space in the refrigerated trailer. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 17.

23. During the FY2019 inspection, the inspector(s) documented that CHA failed to accurately track waste at all times in storage or during treatment at the facility. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 18.

24. During the FY2019 inspection, the inspector(s) documented that CHA failed to properly store two containers of medical waste in the refrigerated trailer. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 19.

25. During the FY2019 inspection, the inspector(s) documented that CHA failed to maintain the level of waste in the large bulk solids tank T404-A at or below the dividers between the tanks. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 20.

26. During the FY2019 inspection, the inspector(s) documented from reviewing the inspection report that CHA failed inspect and certify T-406 and T-403 (sludge tanks) and T-404A (bulk solids tank), to ensure that each tank can safely manage hazardous waste. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 21.

27. During the FY2019 inspection, the inspector(s) documented that CHA failed to document the cause of oxygen concentration excursion in the hydrocarbon vent system above 5% and the corrective action taken to reduce the oxygen. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 22.

28. During the FY2019 inspection, the inspector(s) documented that CHA failed to comply with the Fume Management Plan, Attachment 14. The factual details to support these findings are provided in Exhibit 1 to this NOV. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 23.

29. On September 24, 2019, (in a letter dated September 23, 2019 (DSHW-2019- 011803)) CHA notified the Director that on September 18, 2019, the CHA discovered that the east carbon bed exceeded the backup carbon adsorption system carbon bed life. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 24

30. On November 9, 2018, CHA notified the Director that on November 1, 2018, CHA discovered that it had inadvertently incinerated a drum containing 1.78 pounds of mercury, which exceeded the maximum allowable feed rate for mercury. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 25.

31. During the FY2019 inspection, the inspector(s) documented that CHA failed to conduct sufficient waste analysis of the incinerator waste feed. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 26.

32. During the FY2019 inspection, the inspector(s) documented that CHA failed to properly label a container in its satellite accumulation area in the metals instrument. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 27.

33. CHA failed to comply with 90-day generator storage requirements for two incidents reported by CHA on June 18, 2019 and August 10, 2019, and two incidents documented by the inspector(s) during the FY2019 inspection. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 28.

34. On November 9, 2018 and September 3, 2019, CHA notified the Director that it incinerated prohibited wastes, waste code D009, toxicity characteristic for mercury. The factual details to support this finding are provided in Exhibit 1 to this NOV, paragraph 29.

DETERMINATION OF VIOLATIONS

In accordance with Utah Code §19-6-101, *et seq.*, based on the foregoing FINDINGS, supported in part by *Notice of Violation No. 2001004, Exhibit 1, Factual Details Supporting Findings*, as attached, Clean Harbors Aragonite, LLC (CHA) has violated provisions of the Rules, the Act, and the Permit applicable to its facility. Specifically, CHA has violated the following:

1. Condition 1.A.6 of the Permit and Section 1.0 of the Waste Analysis Plan (WAP) by failing to comply with multiple provisions of the Standard Operating Procedures (SOPs) incorporated by reference as part of the WAP (see Finding 6 and Exhibit 1, paragraph 1).

2. Condition 1.P of the Permit by inaccurately reporting the heat content of waste samples as 20,000 Btu per pound when the result is greater than 20,000 Btu per pound (see Finding 7 and Exhibit 1, paragraph 2).

3. Condition 1.Q.9 of the Permit by failing to notify the Director in writing within seven days of the emergency vent opening during operation; and by failing to notify the Director in writing, regardless of timing, of all emergency vent openings during operation (see Finding 8 and Exhibit 1, paragraph 3).

4. Condition 1.Q.11 of the Permit by failing to notify the Director in writing within seven days of the baghouse bypassing during operation; and by failing to notify the Director in writing, regardless of timing, of all baghouse bypasses during operation (see Finding 9 and Exhibit 1, paragraph 4).

5. Condition 2.D of the Permit and Section 1.0 of the WAP by failing to comply with multiple provisions of the Quality Assurance Plan included as Appendix 1 of the WAP (see Finding 10 and Exhibit 1, paragraph 5.a).

6. Condition 2.D of the Permit and Section 3.0 of the WAP by failing to categorize each waste in 15 documented instances according to the waste categories in Table 2 of the WAP; and by failing to note the category code for each waste stream on the *Waste Receiving Report* (see Finding 10 and Exhibit 1, paragraph 5.b).

7. Condition 2.D of the Permit and Section 3.1.1 of the WAP, Attachment 1 of the Permit, by using in three documented instances a profile for a waste stream from one source of generation for a different waste stream from a different source of generation (see Finding 10 and Exhibit 1, paragraph 5.c).

8. Condition 2.D of the Permit and Section 3.3 of the WAP by failing to conduct necessary waste analysis in 10 separate instances as required (see Finding 10 and Exhibit 1, paragraph 5.d).

9. Condition 2.F of the Permit and Section 4.0 of Attachment 3 of the Permit by failing to submit to the Director, before the expiration of the 72-hour period, a proposed time schedule for correcting a problem discovered by an inspection that cannot be corrected within 72 hours; and by failing to conduct a daily inspection of the container buildings (see Finding 11 and Exhibit 1, paragraph 6).

10. Condition 2.G of the Permit and Sections 2.0 and 2.5 and Table 2 of Attachment 4 of the Permit by failing to conduct the required training within six months of the date of hire; by failing to maintain documentation of the training in each employee's training file; and by failing to conduct Course HS4020 (Forklift Training) for a Chemical Handler (see Finding 12 and Exhibit 1, paragraph 7).

11. Condition 2.I of the Permit and Section 2.4 of Attachment 5 of the Permit by blocking the access to the emergency shower/eye wash in front of Building 68 (see Finding 13 and Exhibit 1, paragraph 8).

12. Condition 2.K of the Permit, R315-264-71(a)(2)(ii), R315-264-72(c), R315-264-71(c), R315-262-20(a)(1), and R315-262-23 UAC by failing to note any discrepancies on each copy of the manifest; by failing to document discussions and resolutions of significant discrepancies with the waste generator or transporter; and by failing to prepare and sign a manifest, obtain the signature of the initial transporter, retain one copy, and send the other copies with the transporter when offering for transport a rejected hazardous waste (see Finding 14 and Exhibit 1, paragraph 9).

13. Condition 2.R of the Permit, Section II of Attachment 17 of the Permit, 40 CFR § 761.1(b)(i) and 40 CFR § 761.274(a) by failing to report all PCB samples on an "as received" or "wet weight" basis (see Finding 15 and Exhibit 1, paragraph 10).

14. Condition 3.A.1 of the Permit, Section 2.7 of Attachment 14 of the Permit, Section 5.2 of Attachment 8 of the Permit, Condition 2.L of the Permit, R315-264-73(a)(1) UAC, and Section 5.8 of Attachment 8 of the Permit by failing to record in the waste tracking system the dates the spent carbon from the backup carbon adsorption system was removed, placed into permitted storage, and treated; by failing to track the spent carbon in the plant-wide database with a unique tracking number; by failing to record the quantity of the spent carbon; and by failing to use the "last in, first out" tracking system for the spent carbon (see Finding 16 and Exhibit 1, paragraph 11).

15. Condition 3.B.6 of the Permit and Section 1.2 of Attachment 8 of the Permit by holding rejected wastes on-site for longer than 60 days (see Finding 17 and Exhibit 1, paragraph 12).

16. Condition 3.B.6 of the Permit and Section 5.2 of Attachment 8 of the Permit by failing to place a green barcode or a green acceptance mark near the barcode on containers that have been accepted and placed into storage (see Finding 18 and Exhibit 1, paragraph 13).

17. Condition 3.C.3 of the Permit by storing liquids with a flash point of less than or equal to 140ºF in Bay 2 of Building E5 while in storage mode; and by storing liquids with a flash point of less than or equal to 140ºF in the breezeway and Building E4 for longer than ten days (see Finding 19 and Exhibit 1, paragraph 14).

18. Condition 3.C.4 of the Permit by storing sulfides in Building E3; and by storing cyanides together with incompatible materials in row B of Bay 2 in Building E5 while in storage mode (see Finding 20 and Exhibit 1, paragraph 15).

19. Condition 3.D.9 of the Permit by failing to unload a transport vehicle carrying containers within ten days of being received at the facility (see Finding 21 and Exhibit 1, paragraph 16).

20. Condition 3.D.10 of the Permit by failing to maintain sufficient aisle space in the refrigerated trailer (see Finding 22 and Exhibit 1, paragraph 17).

21. Condition 3.D.13 of the Permit and Section 5 of Attachment 8 of the Permit by failing to accurately track waste while stored or treated at the facility (see Finding 23 and Exhibit 1, paragraph 18).

22. Condition 3.D.15 of the Permit by failing to store containers of medical waste on pallets in the refrigerated trailer (see Finding 24 and Exhibit 1, paragraph 19).

23. Condition 4.D.6 of the Permit by failing to maintain the level of waste in the large bulk solids tanks at or below the dividers between the tanks (see Finding 25 and Exhibit 1, paragraph 20).

24. Condition 4.D.4 of the Permit by failing to ensure that a qualified Utah registered professional engineer certify that each sludge tank and bulk solids tank can safely manage hazardous waste (see Finding 26 and Exhibit 1, paragraph 21).

25. Condition 4.D.21 of the Permit by failing to immediately take corrective action to reduce the oxygen concentration to below 5% in the hydrocarbon vent system; and by failing to document the cause of the elevated oxygen concentration and the corrective actions taken (see Finding 27 and Exhibit 1, paragraph 22).

26. Condition 5.A.6 of the Permit and Section 2.1 of Attachment 14 of the Permit by failing to maintain the flow of combustion air above 12,000 acfm when the vacuum pump and dilution air fan are operating; by failing to maintain the surface area of each of the NDOs in the bulk solids building at or below the specifications given in Table 1 (during normal operations) and Table 2 (during backup operations); and by failing to operate the bulk solids building such that the direction of air flow through all of the NDOs is inward (see Finding 28 and Exhibit 1, paragraph 23).

27. Condition 5.A.6 of the Permit and Section 2.7 of Attachment 14 of the Permit by exceeding the backup carbon adsorption system carbon bed life (see Finding 29 and Exhibit 1, paragraph 24).

28. Condition 5.D.46 of the Permit by exceeding the maximum allowable feed rate of mercury (see Finding 30 and Exhibit 1, paragraph 25).

29. Condition 5.D.51 of the Permit and Section 3.0 of the WAP in Attachment 1 of the Permit by failing to determine the incineration parameters for a waste prior to incineration; and by failing to determine the PCB concentrations as part of the incineration parameters (see Finding 31 and Exhibit 1, paragraph 26).

30. R315-262-15(a)(5)(i) and (ii) UAC by failing to properly label a container in the satellite accumulation area in the metals instrument lab (see Finding 32 and Exhibit 1, paragraph 27).

31. R315-262-17 UAC by holding containers of accumulated hazardous waste on site for more than 90 days; and by failing to maintain containers of accumulated hazardous waste closed (see Finding 33 and Exhibit 1, paragraph 28).

32. R315-268-3(c) UAC and Appendix XI of R315-268 UAC by incinerating prohibited wastes with the waste code of D009, toxicity characteristic for mercury (see Finding 34 and Exhibit 1, paragraph 29).

OPPORTUNITY FOR HEARING

This NOTICE OF VIOLATION is effective immediately and shall become final unless CHA administratively contests it. Failure to contest this NOTICE OF VIOLATION in the manner and within the time period prescribed by R305-7-303 UAC constitutes a waiver of any right of administrative contest, reconsideration, review, or judicial appeal.

Utah Code Section 19-6-113(2) provides that violation of any order, plan, rule, or other requirement issued or adopted under Title 19, Ch. 6, Pt. 1 may be subject to a civil penalty of up to $13,000 per day for each day of violation.

Dated this 8th day of April, 2020

By: _____

Ty L. Howard, Director
Division of Waste Management and Radiation Control

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing **NOTICE OF VIOLATION on the _8th__ day of April, 2020** by **US Certified Mail, Return Receipt Requested,** to:

William Simmons, General Manager
Clean Harbors Aragonite, LLC
P.O. Box 1339
Grantsville, UT, 84029

Alma Rosas, Office Specialist, 04/08/2020

Notice of Violation No. 2001004
Exhibit 1
Factual Details Supporting Findings

1. Factual details supporting Finding 6:

    a. Section 8 of SOP #003 (Preparation of Non-Aqueous Waste for Organic Analysis) specifies the sequence of steps for adding the sodium sulfate.

        i. During the FY2019 inspection, the inspector(s) documented the following. The sodium sulfate was not added in the appropriate sequence of steps as required by SOP #003.

    b. The current, approved version of SOP #209 (Block Digestion of Solids and Wastes) is Revision 2 (dated April 16, 2019). Section 8.1 of SOP #209 specifies weighing out 1.0 to 1.3 grams of solid or 2.0 to 2.3 grams of liquid waste. Section 8.1.1 of SOP #209 allows an alternative to these weights. It specifies that 0.5 grams of solid or 1.0 grams of liquid samples may be weighed and digested to a final filtered digestate volume of 50 ml. Section 8.2 of SOP #209 outlines an optional step of adding hydrogen peroxide to the sample. SOP #209 does not specify a different amount of spiking solution for the control blank spike (CBS)/control blank spike duplicate (CBSD). SOP #209 does not specify pre-wetting the filter with water, then rinsing the container with DI water before bringing it up to volume.

        i. During the FY2019 inspection, the inspector(s) documented the following. The new metals preparation chemist was using Revision 1 (dated March 3, 2017) of SOP #209, not the current Permit approved version – Revision 2 (dated April 16, 2019).

        ii. During the FY2019 inspection, the inspector(s) documented the following. On August 27, 2019, the laboratory prepared 2 grams of sample rather than the SOP amount of 0.5 grams of solid or 1.0 grams of liquid to a final volume of 50 ml for digestion, contrary to that specified in SOP #209. The chemist did not note the reason for the deviation from the SOP.

        iii. During the FY2019 inspection, the inspector(s) documented the following. Hydrogen peroxide was added to the samples for digestion, but not to the quality control samples, as required by SOP #209.

        iv. During the FY2019 inspection, the inspector(s) documented the following. Digesting samples were not performed in accordance with SOP #209 as the chemist spiked one ml of spiking solution for the CBS/CBSD but he spiked two ml for the MS/MSD.

        v. During the FY2019 inspection, the inspector(s) documented the following. The chemist pre-wet the filter with water, and then rinsed the container with DI water before bringing it up to volume during the digestion procedure, differing from SOP #209

c. Section 7.1.6 of SOP #323 (Mercury in Liquid and Solid Materials) specifies that 7.5 ml of potassium permanganate be added to prepare the mercury samples.

   i. During the FY2019 inspection, the inspector(s) documented the following. The chemist was adding 8 ml (instead of the 7.5 ml specified in the SOP #323) of potassium permanganate to prepare the mercury samples.

d. Section 4.4.1 of SOP #402 (pH Determination for Solid and Waste Samples) specifies that an automatic temperature compensating probe be used in the pH analysis. Section 9.1.2 of SOP #402 specifies that the pH meter be calibrated every two hours. Section 9.4 of SOP #402 specifies that pH duplicates be performed for each matrix. Section 7.2.9 of SOP #402 specifies that the pH calibration slope be 100 ±5. Section 7.4.1 of SOP #402 specifies that the acceptable range for the ending pH CVS be ±0.05.

   i. During the FY2019 inspection, the inspector(s) documented the following. The technician failed to comply with SOP #402 when he did not use a temperature compensating pH probe because the instrument was broken and had not been replaced.

   ii. During the FY2019 inspection, the inspector(s) documented the following. There was missing information throughout Lab Fingerprint #52 Logbook No. 3355. This included the initials of the technician, the date and time of the pH calibrations, and the pH buffer IDs. Therefore, it could not be verified that the pH meter had been calibrated every two hours as required by SOP #402. On April 23, 2019, only two calibrations appear on the calibration sheet. However, the log indicates that six calibrations were done during that day.

   iii. During the FY2019 inspection, the inspector(s) documented the following. pH duplicates were not performed for each matrix as required by SOP #402. There were no pH matrix duplicates conducted April 17 through 19, 2019.

   iv. During the FY2019 inspection, the inspector(s) documented the following. The second pH calibration on April 17, 2019, was outside the acceptable range, at 94.3. No corrective action was performed and/or documented as required by SOP #402.

   v. During the FY2019 inspection, the inspector(s) documented the following. On April 19, 2019, the data indicated a value outside the tolerance range (6.86) for the ending pH CVS. No corrective action was performed and/or documented as required by SOP #402.

e. ASTM Method 3278, referenced in SOP #407(Setaflash Ignitability), states that if a repeat test is necessary, a fresh specimen must be used. Section 8.7 of SOP #403 (Water Reactivity Testing) and section 8.1.4 of SOP #407 (Setaflash Ignitability) state that the results will be reported as “POS” or “NEG”.

   i. During the FY2019 inspection, the inspector(s) documented the following. For the Setaflash quality control calibration duplicate, the technician did not use a

new sample aliquot as required by SOP #407, but repeated the test with the same sample/calibration standard. Similarly, the same sample aliquot used for the ambient ignitability test was also used for the Setaflash test.

ii. During the FY2019 inspection, the inspector(s) documented the following. The results for many of the tests were recorded in the logbooks as "P" and "N" or "K" and "-", rather than "POS" or "NEG", as required in SOPs #403 and #407. These notations were not listed with the other acronyms defined on the top of the page.

2. Factual details supporting Finding 7:
   a. Condition 1.P of the Permit specifies that samples and measurements taken for the purpose of demonstrating compliance with the Permit be accurate and representative of the monitored activity.

      i. During the FY2019 inspection, the inspector(s) documented the following. When CHA analyzes waste samples for heat content, and the result is greater than 20,000 Btu per pound, the result is reported as 20,000 Btu per pound.

3. Factual details supporting Finding 8:

   a. Condition 1.Q.9 of the Permit requires that CHA notify the Director in writing within seven days of the emergency vent opening during operation.

      i. During the FY2019 inspection, the inspector(s) documented the following. CHA reported 21 vent openings during FY2019. Three of the 21 notifications were submitted later than the required seven days: October 14, 2018 (12 days), December 18, 2018 (8 days), and January 27, 2019 (8 days).

      ii. During the FY2019 inspection, the inspector(s) documented the following. There were an additional three vent openings during FY2019 that were not reported. These vent openings occurred on September 28, 2018, January 5, 2019, and May 5, 2019.

4. Factual details supporting Finding 9:

   a. Condition 1.Q.11 of the Permit requires that CHA notify the Director in writing within seven days of the baghouse bypassing during operation.

      i. During the FY2019 inspection, the inspector(s) documented the following. Aragonite reported eight baghouse bypasses during FY2019. Three of the eight notifications were submitted later than the required seven days: December 18, 2018 (8 days), December 25, 2018 (9 days), and January 27, 2019 (8 days).

      ii. During the FY2019 inspection, the inspector(s) documented the following. There was an additional baghouse bypass during FY2019 that was not reported. It occurred on September 28, 2018.

5. Factual details supporting Finding 10:

    a. Condition 2.D of the Permit and the waste analysis plan. requires CHA to comply with the waste analysis procedures specified in Attachment 1 of the Permit. Section 1.0 of the WAP in Attachment 1 of the Permit specifies that CHA follow the methods and procedures in the Quality Assurance Plan (QAP) included as Appendix 1 of the WAP. Section 4 of the QAP specifies that there be a Quality Assurance Compliance Officer (QAO) at the facility. Section 12.1 of the QAP specifies that External Audits be completed by participating in semiannual blind round robin tests with other laboratories. Section 12.2 of the QAP requires that Internal Audits be performed on a quarterly basis by the QAO under the direction of the Laboratory Manager. Section 14 of the QAP specifies that corrective actions be initiated as a result of performance audits, system audits, and laboratory comparison studies, and that corrective action reports be reviewed and implemented. Section 15 of the QAP specifies that the QAO is responsible to report to the Laboratory Manager every four months on the performance of the measurement systems and data quality. It also specifies that these reports include an assessment of measurement data accuracy, precision, and completeness; results of performance audits; results of system audits; significant quality assurance problems, and recommended solutions. Section 4.5 of the WAP and Section 7.1 of the QAP specify that gummed sample labels be affixed to the sampling containers at the time of sampling. It also specifies that these labels be filled out at the time of sample collection. The Radioactivity Screen (Method Aragonite-6) in Section 5 of the WAP specifies that the window of the Geiger-Mueller detector be placed within one inch of the sample surface.

        i. During the FY2019 inspection, the inspector(s) documented the following. CHA was not following the approved QAP in Attachment 1 of the Permit as required. The QAP that CHA was using was a different version that had been used for the Utah lab certification inspection.

        ii. During the FY2019 inspection, the inspector(s) documented the following. CHA has not had a QAO for the laboratory since 2009, as required by the QAP, Section 4.

        iii. During the FY2019 inspection, the inspector(s) documented the following. CHA failed to comply with Section 12.2 of the QAP as it could only provide a total of three quarterly audit reports for the last three years.

        iv. During the FY2019 inspection, the inspector(s) documented the following. The first of these three audit reports only included a graph of monthly sample receipts. There was no auditing provided as required Section 12 of the QAP.

        v. During the FY2019 inspection, the inspector(s) documented the following. Included in the second of these three audit reports was lab monitoring of specific items by selected technicians. CHA failed to adequately assess measurement data accuracy, precision, and completeness, the results of the performance and system audits, any significant quality assurance problems, and recommended solutions as required by Section 12 of the QAP because no information was provided in the reports as to whether these technicians had issues or concerns, or whether they

actually performed the tasks. The report just indicated that they were assigned to the task.

vi. During the FY2019 inspection, the inspector(s) documented the following. The second audit report also indicated a failure for cyanide during an audit. The report did not indicate who the employee was that analyzed the samples or the expected date that the corrective action plan would be completed.

vii. During the FY2019 inspection, the inspector(s) documented the following. The third audit report showed that zinc and manganese were not within the acceptable ranges. No corrective action plan was generated for the out-of-control sample results.

viii. During the FY2019 inspection, the inspector(s) documented the following. When CHA was validating samples, the heat content for sample #18030359 was flagged as being high (23,300 Btu per pound). A request was made to rerun the sample. The sample was not rerun, but instead entered as 20,000 Btu per pound in the waste tracking system. This generated a corrective action report dated March 21, 2018. The corrective action plan indicated that they would rerun samples before reporting if the result is over 20,000 Btu per pound. The corrective action plan completion was not done and/or documented. During discussions with the technician during the inspection, it was determined that samples are not rerun when the result is over 20,000 Btu per pound, and the heat content is reported as 20,000 Btu per pound for those samples.

ix. During the FY2019 inspection, the inspector(s) documented the following. The audit reports were completed by the Laboratory Manager; not a QAO as required by the QAP.

x. During the FY2019 inspection, the inspector(s) documented the following. Sampling of drums was observed in Building E1. Sample labels were not filled out and attached to the sample bottles at the time of sample collection, as required by the Permit, Section 4.5 of the WAP and Section 7.1 of the QAP.

xi. During the FY2019 inspection, the inspector(s) documented the following. CHA was conducting the Radioactivity Screen by passing the detector window over the outside of the drum and sample container in both laboratories, rather than within one inch of the sample surface as required in Section 5 of the WAP.

b. Condition 2.D of the Permit requires CHA to comply with the waste analysis procedures specified in Attachment 1 of the Permit. Section 3.0 of the WAP in Attachment 1 of the Permit requires that CHA categorize each waste according to the waste categories in Table 2 of the WAP. It also specifies that CHA clearly document the waste category for each waste stream accepted at the facility by noting the category code for each waste stream on the *Waste Receiving Report*. Table 2 specifies that lab packs are containers packed inside a larger container and will have a lab pack profile and inventory sheets. Table 2 specifies that consolidation containers are shipping containers containing small containers of consumer packaged materials. Table 2 specifies that debris is a

homogeneous or heterogeneous solids material. Debris may not have containers containing any liquid.

i. During the FY2019 inspection, the inspector(s) documented the following. Containers 81939390, 82138166, 81941247, and 82154761-65 were shipped as lab packs and had inventory sheets. CHA categorized them as consolidation containers.

ii. During the FY2019 inspection, the inspector(s) documented the following. Containers 82113589, 82286110, and 81830478 were shipped as lab packs and had inventory sheets. CHA categorized them as debris.

iii. During the FY2019 inspection, the inspector(s) documented the following. CHA categorized container 82462985 as debris. It held inner containers of formalin, which is a liquid.

iv. During the FY2019 inspection, the inspector(s) documented the following. There was no *Waste Receiving Report* for line 2 of manifest 009603541FLE (containers 78704452-78704459).

c. Condition 2.D of the Permit requires CHA to comply with the waste analysis procedures specified in Attachment 1 of the Permit. The WAP in Attachment 1 of the Permit specifies the procedures for approving a profile for a waste stream to be managed at the facility. Section 3.1.1 specifies that if a waste is approved for management at the facility, a unique identification number is assigned to the waste stream. Section 1.U of the Permit defines a waste stream as a waste that is, or should be (as defined by the US DOT description), identified as a line item on the Uniform Hazardous Waste Manifest from the same source of generation delivered with the same waste load.

i. During the FY2019 inspection, the inspector(s) documented the following. The generator for the profile for container 82631631 (profile LCCRD) was Clean Harbors Environmental Services, Inc. in Norwell, MA. Container 82631631 was shipped on manifest 000291437DAT. The generator on the manifest was Kelly Moore Store # 602 in Oakland, California.

ii. During the FY2019 inspection, the inspector(s) documented the following. The generator for the profile for container 82408623 (profile LCHG2) was Clean Harbors Environmental Services, Inc. in Norwell, MA. Container 82408623 was shipped on manifest 013543219FLE. The generator on the manifest was Shoreline Community College in Shoreline, Washington.

iii. During the FY2019 inspection, the inspector(s) documented the following. The generator for the profile for container 81854335 (profile LCCRN-INTER) was Clean Harbors Environmental Services, Inc. in Norwell, MA. Container 81854335 was shipped on manifest 013843741FLE. The generator on the manifest was Clean Harbors Environmental Services, Inc. in Kimball, Nebraska.

d. Condition 2.D of the Permit requires CHA to comply with the waste analysis procedures specified in Attachment 1 of the Permit. Section 3.3 of the WAP in Attachment 1 of the

Permit specifies that for those wastes which cannot be sampled or analyzed, the facility will develop a set of incineration parameters for each category of waste using the procedures described in Sections 3.3.2 through 3.3.5. Section 3.3.2 of the WAP specifies that for each lab pack DOT hazard class, CHA will establish an incineration chemistry based on the analyses of fifty samples. It further requires that the matrix be updated annually by including the analysis of samples from a minimum of ten additional lab pack containers from each DOT hazard class. It then requires that, whenever a lab pack is incinerated, it will be assigned the incineration parameters from the matrix that corresponds to the DOT hazard class of the lab pack. It also requires that records of supporting analyses and calculations used to determine lab pack incineration parameters be maintained in the facility operating record. Identical requirements are specified for consolidation containers in Section 3.3.3, for debris in Section 3.3.4, and for consumer products, pharmaceuticals, and gas cylinders in Section 3.3.5. These requirements were established and effective on May 11, 2016, so there should be a total of eighty samples that should be included in each waste category/hazard class evaluation.

i. During the FY2019 inspection, the inspector(s) documented the following. There are a total of 48 waste category/hazard class combinations. CHA had not yet completed the initial evaluation with fifty samples for ten of the combinations. CHA had not done any of the annual evaluations using the additional ten samples for any of the three years since the requirement has been in place.

ii. During the FY2019 inspection, the inspector(s) documented the following. Container 81830478 was in the waste category of lab pack and had a DOT hazard class of 6.1. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

iii. During the FY2019 inspection, the inspector(s) documented the following. Container 81844921 was in the waste category of consolidation container and had a DOT hazard class of 5.1. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

iv. During the FY2019 inspection, the inspector(s) documented the following. Container 81920315 was in the waste category of consolidation container and had a DOT hazard class of 8. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

v. During the FY2019 inspection, the inspector(s) documented the following. Container 82113589 was in the waste category of lab pack and had a DOT hazard class of 6.1. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

vi. During the FY2019 inspection, the inspector(s) documented the following. Container 82113590 was in the waste category of debris and had a DOT hazard class of 6.1. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

vii. During the FY2019 inspection, the inspector(s) documented the following. Container 81787938 was in the waste category of lab pack and had a DOT hazard class of 4.3. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

viii. During the FY2019 inspection, the inspector(s) documented the following. Container 82286765 was in the waste category of lab pack and had a DOT hazard class of 6.1. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

ix. During the FY2019 inspection, the inspector(s) documented the following. Container 81933853 was in the waste category of consolidation container and had a DOT hazard class of 5.1. The chemistry assigned to this container did not match the chemistry that CHA had developed for that combination.

x. During the FY2019 inspection, the inspector(s) documented the following. CHA had records of all of the analytical data used to develop the incineration chemistries for the various waste category/hazard class combinations. However, the calculations which use those analyses to determine the overall chemistry for each particular combination could not be validated.

6. Factual details supporting Finding 11:

a. Condition 2.F of the Permit requires CHA to comply with the inspection procedures in Attachment 3 of the Permit. Section 4.0 of Attachment 3 of the Permit specifies that any malfunction or deterioration discovered by an inspection be corrected within 72 hours, and if the remedy requires more time, CHA will submit to the Director, before the expiration of the 72-hour period, a proposed time schedule for correcting the problem. Attachment 3 also requires daily inspections of the container buildings.

i. On May 14, 2019, (in a letter dated May 8, 2019 (DSHW-2019-004803)) CHA notified the Director that on May 7, 2019, the facility discovered that it had failed to notify the Director after discovering damage to the floors in the container storage buildings that could not be repaired within 72 hours.

ii. During the FY2019 inspection, the inspector(s) documented the following. The Bulk Solids Unloading Daily inspection failed on December 19, 2018, for the rollup door that was not in working condition. A work ticket was generated for the rollup door (19453877-002). The work ticket indicated that the rollup door was fixed on January 10, 2019. CHA did not submit a 72-hour delay-in-repair letter for the rollup door to the Director as required by Attachment 3.

iii. During the FY2019 inspection, the inspector(s) documented the following. There was no record that the Daily Container Buildings Inspection was completed on December 30, 2018.

iv. During the FY2019 inspection, the inspector(s) documented the following. Work tickets for liquid under the bulk solids tanks discovered on March 14, 2019, were closed out on March 20, 2019, but they don't indicate when the containment was pumped out, and no 72-hour delay-in-repair letter was submitted to the Director as required by Attachment 3.

7. Factual details supporting Finding 12:

a. Condition 2.G of the Permit requires CHA to comply with the personnel training procedures in Attachment 4 of the Permit. Section 2.0 of Attachment 4 of the Permit requires that the required training occur within six months of the date of hire. Section 2.5 of Attachment 4 of the Permit requires that documentation of the training be maintained in each employee's training file. Table 2 of Attachment 4 of the Permit specifies that Course HS4020 (Forklift Training) is required for Chemical Handlers.

i. During the FY2019 inspection, the inspector(s) documented the following. Six months after the date of hire for Ryan Millward was December 5, 2018. CHA failed to comply with Attachment 4 as course SS2000 (Permit Training) was not completed by Mr. Millward until February 8, 2019.

ii. During the FY2019 inspection, the inspector(s) documented the following. Six months after the date of hire for Aaron Sundet was June 4, 2019. CHA failed to comply with Attachment 4 as course SS2080 was not completed by Mr. Sundet until June 27, 2019.

iii. During the FY2019 inspection, the inspector(s) documented the following. Many of the courses listed in the training summaries did not have documentation in the training files. SS2016 (New Employee Orientation), SS2027 (Industrial Safety Training), and HS6020 (Fire Safety) are shown as being completed by Jace Broadbent on August 28, 2018, in his training summary, but there is no record of those courses in his training file. SS2027 (Industrial Safety Training), SS2025 (Contingency Plan), SS2017 (Site Orientation Refresher), AG1305 (Forklift Training), and HS6701 (Confined Space Refresher) are shown on Jace Broadbent's training summary as being completed August 29, 2019, and August 30, 2019, but there was no supporting documentation in his training file. HS6305 (Personal Protective Equipment/ HAZWOPER Refresher Module) is shown as being taken on September 7, 2018, but there's no supporting documentation in Mr. Broadbent's training file.

iv. During the FY2019 inspection, the inspector(s) documented the following. Courses HS6305 (Personnel Protective Equipment/HAZWOPER Refresher Module) and HS6304 (Confined Space/Heat Stress HAZWOPER Refresher Module) are listed in the training summary for Kinsey Cameron as being completed on July 31, 2018, but her training file contains no supporting documentation for those courses.

v. During the FY2019 inspection, the inspector(s) documented the following. The training summary for Ashton Walters indicates that course HS6305 (Personnel Protective Equipment/HAZWOPER Refresher Module) was completed on May

29, 2018, but there's no documentation to confirm this in her training file.

vi. During the FY2019 inspection, the inspector(s) documented the following. The training summary for Ryan Millward indicates that Course HS6700 (Confined Space Entry Entrant/Attendant) was completed on June 6, 2018. However, no documentation supporting this was included in his training file. His training summary indicates that course HS4026 (Forklift Refresher) was completed on June 25, 2019, but there was no supporting documentation in his training file for this event.

vii. During the FY2019 inspection, the inspector(s) documented the following. Courses HS6305 (Personnel Protective Equipment/HAZWOPER Refresher Module) and SS2016 (Site Orientation) are shown in the training summary for Michael Hatch as being completed on August 3, 2018, and August 6, 2018, but no confirmation could be identified in his training file. Course HS6020 (Fire Safety) and HS6000 (CPR) are shown as being completed on January 25, 2019, and August 15, 2019, in his training summary, but no documentation for these courses was located in his training file.

viii. During the FY2019 inspection, the inspector(s) documented the following. The training summary for Meranda Jolley shows that Course HS6305 (Personnel Protective Equipment/HAZWOPER Refresher Module) and Course HS6301 (Globally Harmonize System/HAZWOPER Refresher Module) were completed on September 4, 2018, and November 29, 2018, but no supporting documentation was found in her training file.

ix. During the FY2019 inspection, the inspector(s) documented the following. There was no supporting documentation in the training file for Sarah Sims for Course 4020 (Forklift Training) which was shown as being completed on November 1, 2018, on her training summary, and Course HS6305 (Personnel Protective Equipment/HAZWOPER Refresher Module) which was shown as being completed on October 17, 2018, on her training summary.

x. During the FY2019 inspection, the inspector(s) documented the following. Aaron Sundet's training file did not include documentation for Courses SS2081 (Lab Safety) on December 4, 2018, HS6302 (Medical/Bloodborne Pathogens/HAZWOPER Refresher Module) on February 27, 2019, SS2001 (Permit Refresher) on March 14, 2019, HS6303 (Respiratory Protection/ HAZWOPER Refresher Module) on March 28, 2019, HS6304 (Confined Space/Heat Stress/HAZWOPER Refresher Module) on April 26, 2019, SS2027 (Industrial Safety Training) on June 18, 2019, and SS2080 (Lab QC) on June 27, 2019, as noted on his training summary.

xi. During the FY2019 inspection, the inspector(s) documented the following. There was no documentation in the training file for Seleka Dean for HS6020 (Fire Safety) on September 18, 2018, HS6306 (Decontamination Procedures/ HAZWOPER Refresher Module) on March 27, 2019, HS6307 (Emergency Response/HAZWOPER Refresher Module) and HS6304 (Confined Space/HAZWOPER Refresher Module) on March 28, 2019, AG1305 (Forklift

Refresher) on June 12, 2019, and HS6020 (Fire Safety) on August 15, 2019, as noted on her training summary.

xii. During the FY2019 inspection, the inspector(s) documented the following. Ryan Millward was a Facility Technician. The Facility Technician job title corresponds to the job title of Chemical Handler in the Permit. There is no indication on his training summary or documentation in his training file that Course HS4020 (Forklift Training) was ever completed.

8. Factual details supporting Finding 13:

   a. Condition 2.I of the Permit requires CHA to maintain at the facility the emergency equipment and systems identified in Attachment 5 of the Permit. Section 2.4 of Attachment 5 of the Permit requires that CHA maintain decontamination equipment as necessary to assure its proper operation in time of emergency

      i. During the FY2019 inspection, the inspector(s) documented the following. A ladder was blocking the access to the emergency shower/eye wash in front of Building 68.

9. Factual details supporting Finding 14:

   a. Condition 2.K of the Permit requires that CHA comply with the manifest requirements of R315-264-71 and R315-264-72 UAC. R315-264-71(a)(2)(ii) UAC specifies that CHA must note any discrepancies on each copy of the manifest. R315-264-72(c) UAC requires that upon discovering significant discrepancies, CHA shall attempt to reconcile the discrepancy with the waste generator or transporter. Section 2.4 of Attachment 8 of the Permit specifies that written documentation of these discussions and resolutions will be clearly noted in the document packet for each manifest. R315-264-71(c) UAC requires that whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-262 UAC. R315-262-20(a)(1) UAC requires that a generator who offers for transport a rejected hazardous waste load, shall prepare a manifest. R315-262-23 UAC requires the generator to sign the manifest, obtain the signature of the initial transporter, retain one copy, and send the other copies with the transporter.

      i. During the FY2019 inspection, the inspector(s) documented the following. Drum 82025583 was shipped to Aragonite on line 2 of manifest 012598432FLE. The DOT shipping description on the manifest was “RQ, UN3264, Waste Corrosive Liquid, Acidic, inorganic, N.O.S. Solution (Hydrochloric Acid, Chromium) 8, PGII (D002, D008) Marine Pollutant = (Lead, Chrome)”. A sample of the waste tested positive for the oxidizer screen. The manifest in waste tracking was changed to reflect this discrepancy. The DOT description was also changed on the manifest in RCRAInfo. It now reads “UN3098, Waste Oxidizing Liquid, Corrosive, N.O.S. (Hydrochloric Acid, Chromium), 5.1, (8), PGII, Marine Pollutant”. CHA has documentation of the communications with the generator to resolve the discrepancy, but the discrepancy was not noted on the manifest.

      ii. During the FY2019 inspection, the inspector(s) documented the following. Drum

81493881 was shipped to Aragonite on line 18 of manifest 013211889FLE. The DOT shipping description on the manifest was "NA3082, Hazardous Waste Liquid, N.O.S. (Formalin, Methanol), 9, PGIII". A sample of the waste tested positive for the ignitability screen. The manifest in waste tracking was changed to reflect this discrepancy. The DOT description was also changed on the manifest in RCRAInfo. It now reads "UN2924, Waste Flammable Liquids, Corrosive, N.O.S. (Formalin, Methanol), 3 (8), PGIII". CHA has documentation of the communications with the generator to resolve the discrepancy, but the discrepancy was not noted on the manifest.

iii. During the FY2019 inspection, the inspector(s) documented the following. Manifest 013543444FLE shows one item on line 2 (81967654). Waste tracking shows two items on line 2. The other item is 82675710. The discrepancy was not noted on the manifest. CHA believed that they had resolved the discrepancy with the generator; however, they had no documentation showing the communications to resolve the discrepancy with the generator.

iv. During the FY2019 inspection, the inspector(s) documented the following. Manifest 013260256FLE shows one item on line 4 (81999857). Waste tracking shows four items on line 4. The other items are 82891085-82891087. The discrepancy was not noted on the manifest. CHA believed that they had resolved the discrepancy with the generator; however, they had no documentation showing the communications to resolve the discrepancy with the generator.

v. During the FY2019 inspection, the inspector(s) documented the following. Drum 82078715 was shipped to Aragonite on manifest 012644566FLE on August 15, 2019. It was later rejected by CHA and shipped to Clean Harbors El Dorado. A hazardous waste manifest was not prepared, signed by CHA, signed by the initial transporter, and shipped with the waste.

10. Factual details supporting Finding 15:

a. Condition 2.R of the Permit. specifies that CHA comply with the polychlorinated biphenyl (PCB) management procedures in Attachment 17 of the Permit. Section II of Attachment 17 of the Permit requires that CHA comply with all of the PCB regulations contained in 40 CFR Part 761. 40 CFR §761.1(b)(i) specifies that any person determining PCB concentrations for non-liquid PCBs must do so on a dry weight basis. 40 CFR §761.274(a) specifies that all sample concentrations for non-liquid PCBs be reported on a dry weight basis.

i. During the FY2019 inspection, the inspector(s) documented the following. CHA reports all samples (including PCBs) on an "as received" or "wet weight" basis.

11. Factual details supporting Finding 16:

a. Condition 3.A.1 of the Permit. specifies that CHA comply with all requirements of the Permit when storing and/or treating site-generated wastes. Section 2.7 of Attachment 14 of the Permit specifies that the spent carbon from the backup carbon adsorption system will be managed as a hazardous waste and that records of the dates the carbon is

removed, placed into permitted storage, and treated will be maintained in the operating record. Section 5.2 of Attachment 8 of the Permit requires that each waste be tracked in the plant-wide database with a unique tracking number. Condition 2.L of the Permit specifies that CHA maintain an operating record in accordance with R315-264-73 UAC. R315-264-73(a)(1) UAC requires that the quantity of waste be included in the operating record. Section 5.8 of Attachment 8 specifies that the bulk solids tanks use a "last in, first out" tracking system.

i. During the FY2019 inspection, the inspector(s) documented the following. Carbon was removed from both carbon adsorption beds on July 18, 2019. It was combined with carbon from the carbon injection silo and placed into the bulk solids tanks and then incinerated. CHA did not assign a tracking number to this waste and did not track it in the waste tracking system.

ii. During the FY2019 inspection, the inspector(s) documented the following. The carbon removed from the carbon adsorption beds on July 18, 2019, was not weighed before placing it in the bulk solids tanks.

iii. During the FY2019 inspection, the inspector(s) documented the following. The carbon removed from the carbon adsorption beds on July 18, 2019, and placed in the bulk solids tanks was not tracked in the “last in, first out” tracking system.

12. Factual details supporting Finding 17:

a. Condition 3.B.6 of the Permit requires CHA to comply with the provisions specified in Attachment 8 of the Permit (Waste Storage, Processing, and Tracking). Section 1.2 of Attachment 8 of the Permit specifies the requirements for rejected wastes. It specifies that rejected wastes not remain on-site for longer than 60 days, unless an extension has been granted by the Director.

i. During the FY2019 inspection, the inspector(s) documented the following. During FY2019, four of the rejects (78720946, 78720944, 78720945, and 78720946) exceeded the 60-day time limit. No extension had been granted by the Director.

13. Factual details supporting Finding 18:

a. Condition 3.B.6 of the Permit requires CHA to comply with the provisions specified in Attachment 8 of the Permit (Waste Storage, Processing, and Tracking). Section 5.2 of Attachment 8 of the Permit specifies that containers that have been accepted and placed into storage will have a green barcode or a green acceptance mark near the barcode.

i. During the FY2019 inspection, the inspector(s) documented the following. There were several containers in the refrigerated trailer that had been accepted that did not have a green barcode or green acceptance mark. These included 82307343, 82307344, 82307346, 82446225, 82448132, and 82448133.

14. Factual details supporting Finding 19:

a. Condition 3.C.3 of the Permit specifies where liquids with a flash point of less than or equal to 140ºF may be stored. It does not include Bay 2 of Building E5 while in storage mode. It only allows storage in the breezeway and Building E4 for up to ten days. Section 3.0 of Attachment 1 of the Permit states that liquid samples that test positive for flash point at 140°F will be considered ignitable liquids subject to the restrictions in Conditions 3.C.3. Section 3.0 of Attachment 1 of the Permit also states that material shipped as "flammable liquids" or with a DOT hazard class of "3" will be considered ignitable liquids, and that if CHA does not believe that it is an ignitable liquid, the reason for the decision to not manage the waste as an ignitable liquid will be noted on the *Waste Receiving Report*.

   i. During the FY2019 inspection, the inspector(s) documented the following. Container 81797409 was shipped as a DOT hazard class 3 (flammable liquid) and tested positive for ignitability (i.e., a flash point of less than 140ºF). It also had the D001 waste code (indicating ignitability). The barcode indicated that it was ignitable and it had a flammable liquid label on it. It was being stored in Bay 2 of Building E5. Bay 2 was in storage mode.

   ii. During the FY2019 inspection, the inspector(s) documented the following. There were several other drums being stored in Bay 2 of Building E5 that indicated that they were ignitable on the barcode. These included drums 81314539, 81314558, and 81314565. These had the D001 waste code (indicating ignitability) and a DOT shipping name (Waste Corrosive Liquids, Flammable) and hazard class (8, (3)) that indicated that they were flammable (as a secondary hazard). There was nothing on the *Waste Receiving Report* indicating that Aragonite did not consider these to be ignitable waste.

   iii. During the FY2019 inspection, the inspector(s) documented the following. Waste tracking showed that drum 81944992 was stored in Building E4 and the breezeway from August 13, 2019, until September 12, 2019 (30 days), beyond the ten day storage limit. It was shipped as a flammable liquid with a DOT hazard class of 3 (flammable liquid). There was nothing on the *Waste Receiving Report* indicating that Aragonite did not consider this to be an ignitable waste.

15. Factual details supporting Finding 20:

a. Condition 3.C.4 of the Permit specifies that cyanides and sulfides are to be stored in Building 69. When the capacity in Building 69 is not adequate, such as during turnarounds, CHA may store them in the bays in Buildings E1 and E5, provided they have given the Director oral and written notification. On September 10, 2019, CHA provided notification of their intent to store cyanides in the bays due to the lack of capacity during the turnaround. Other materials which are potentially incompatible with these materials are not allowed to be stored in the same area as these materials.

   i. During the FY2019 inspection, the inspector(s) documented the following. Container 82169279 was a lab pack described as hydrated sodium sulfide. In violation of Condition 3.C.4, waste tracking shows that it was stored in E3-N05-

L1 from September 13 to September 24, 2019.

ii. During the FY2019 inspection, the inspector(s) documented the following. Container 81832277 was described as zinc cyanide and had the D003 waste code. Container 81965778 was described as sodium cyanide and zinc cyanide and had the D003 waste code. Container 81966346 was described as acidic corrosive liquid (hydrochloric acid) and had the D002 waste code and a pH of 2.2. All three were stored together in row B of Bay 2 in Building E5. Bay 2 was in storage mode.

16. Factual details supporting Finding 21:

a. Condition 3.D.9 of the Permit requires that CHA unload any transport vehicle carrying containers within ten days of being received at the facility.

i. On August 9, 2019, (in a letter dated August 7, 2019 (DSHW-2019-009005)) CHA notified the Director that on August 5, 2019, the facility discovered that it did not unload containers from a transport vehicle within ten days of receipt

17. Factual details supporting Finding 22:

a. Condition 3.D.10 of the Permit requires CHA to maintain sufficient aisle space in the container management areas.

i. During the FY2019 inspection, the inspector(s) documented the following. There were two containers of medical waste stored in the aisle space in the refrigerated trailer.

18. Factual details supporting Finding 23:

a. Condition 3.D.13 of the Permit requires CHA to maintain a record of the location of each container in the container storage areas. It also specifies that a history of the movement of each container of waste be maintained from the time it is placed into one of the container management areas until it is either incinerated or manifested off-site. It also specifies that CHA provide the Director a remote link and the appropriate query system to access to the electronic waste tracking system. It also requires CHA to comply with the waste tracking provisions of Attachment 8 of the Permit. Section 5 of Attachment 8 of the Permit requires that containers of wastes be tracked in real time so that their location is known at any time. Section 5.2.2 of Attachment 8 of the Permit describes the requirements that CHA will follow when containers are not in the location shown in the waste tracking system. For containers that physically exist (or existed) that cannot be located at the facility, CHA will update the waste tracking system by moving the container record to the "DWB" virtual location and begin efforts to locate the container or resolve the discrepancy. All efforts to locate the missing containers or resolve the discrepancies must be thoroughly documented.

i. During the FY2019 inspection, the inspector(s) documented the following. Drum 78428206 was physically located in E1-M at Aragonite during the inspection. The Division's access to the waste tracking system indicated that it was not at

Aragonite. However, the drum was in the CHA waste tracking system. The drum was shipped from CHA to Kinsbursky Brothers Inc. on April 24, 2019. It was rejected by Kinsbursky and returned to Aragonite on May 23, 2019. The drum later showed up on the Division's access to waste tracking. However, the waste tracking system does not ever show it being shipped off-site and returning.

ii. During the FY2019 inspection, the inspector(s) documented the following. Item 82042356 was an oxygen cylinder physically located in the cylinder storage area on September 25, 2019. The Division's access to the waste tracking system indicated that it was not at Aragonite. However, the drum was in the CHA waste tracking system. It had been put on line 5 of manifest 013803453FLE to be shipped to Clean Harbors LaPorte (LT) on August 28, 2019. It did not get shipped with the manifest and was reported as a discrepancy by LT. It was then placed on a new manifest (line 4 of manifest 013803503FLE) to be shipped to LT on September 4, 2019. Waste tracking showed that it arrived at LT on September 17, 2019, and was still there on September 30, 2019. The manifest was signed by LT on September 17, 2019, and there was no indication of any discrepancies.

iii. During the FY2019 inspection, the inspector(s) documented the following. Items 81967654 and 82675710 were both at Aragonite and were later shipped to another Clean Harbors facility. These do not show up on the Division's access to the waste tracking system.

iv. During the FY2019 inspection, the inspector(s) documented the following. Items 81899857and 82891085-82891087 were all at Aragonite and were later shipped to another Clean Harbors facility. These do not show up on the Division's access to the waste tracking system.

v. During the FY2019 inspection, the inspector(s) documented the following. The query for the infectious wastes at the facility on the Division's access to the waste tracking system was not functional.

vi. During the FY2019 inspection, the inspector(s) documented the following. Drums 79028079 and 79028121 were in the "DWB" virtual location and were resolved by voiding them. During the inspection, CHA put together a summary of why they came to that resolution. The summary indicated that these two drums were highlighted on the repack logs and that there was a sticky note, but it was illegible. It had been long enough since they were repacked before they did the resolution that the employee that wrote the note was no longer with the company. Nobody knew why the drums were highlighted. CHA was unable to produce the referenced repack logs and note.

vii. During the FY2019 inspection, the inspector(s) documented the following. Waste tracking showed that container 81866898 was still on the BZCON (breezeway conveyor) when it was no longer there. Rather than investigating what happened to the container, it was manually incinerated in waste tracking. This turned out to not be the case, as the container later showed up in E4-J as a zero-weight container.

viii. During the FY2019 inspection, the inspector(s) documented the following. Waste tracking showed that drum 82078715 was rejected by CHA on September 26, 2019, but also shows it in inventory locations at Aragonite through October 28, 2019

19. Factual details supporting Finding 24:

    a. Condition 3.D.15 of the Permit requires that CHA store gas cylinders and bulk containers on pallets.

        i. During the FY2019 inspection, the inspector(s) documented the following. Two containers of medical waste stored in the aisle in the refrigerated trailer, not on pallets.

20. Factual details supporting Finding 25:

    a. Condition 4.D.6 of the Permit requires CHA to maintain the level of waste in the large bulk solids tanks at or below the dividers between the tanks.

        i. During the FY2019 inspection, the inspector(s) documented the following. Some of the waste in tank T404-A (one of the large bulk solids tanks) was piled above the tank dividers.

21. Factual details supporting Finding 26:

    a. Condition 4.D.4 of the Permit requires that, at least once every four years, CHA shall empty, visually inspect, and measure the corrosion in each sludge tank and bulk solids tank, and an independent, qualified Utah registered professional engineer shall certify that each tank can safely manage hazardous waste.

        i. During the FY2019 inspection, the inspector(s) documented the following. The inspection reports for T-406 and T-403 (sludge tanks) and T-404A (bulk solids tank) indicate that only a partial visual inspection was performed due to a lack of cleanliness. The engineer did not certify that the tanks can safely manage hazardous waste.

22. Factual details supporting Finding 27:

    a. Condition 4.D.21 of the Permit specifies that the concentration of oxygen in the hydrocarbon vent system shall be maintained below 5%. It further specifies that if the oxygen concentration exceeds 5%, corrective action will immediately be taken to reduce the oxygen concentration to below 5%, and the cause of the elevated.

        i. During the FY2019 inspection, the inspector(s) documented the following. CHA documents the causes and corrective actions for oxygen exceedances in the hydrocarbon vent system on *System Trouble Reports*. There was no *System Trouble Report* or other documentation for the oxygen excursion that occurred on December 30, 2018.

23. Factual details supporting Finding 28:

    a. Condition 5.A.6 of the Permit requires that CHA comply with the provisions specified in the Fume Management Plan, Attachment 14 of the Permit. Section 2.1 of Attachment 14

of the Permit specifies that the flow of combustion air will be maintained above 12,000 acfm when the vacuum pump and dilution air fan are operating. Section 2.1 of Attachment 14 of the Permit also requires that CHA maintain the surface area of each of the Natural Draft Openings (NDOs) in the Procedure T Enclosure at or below the specifications given in Table 1 (during normal operations) or Table 2 (during backup operations). Section 2.1 of Attachment 14 of the Permit also requires that the bulk solids building be operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T -- Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR §52.741, Appendix B. Section 5.4 of 40 CFR §52.741, Appendix B requires that the direction of air flow through all NDOs be inward.

i. During the FY2019 inspection, the inspector(s) documented the following. There were three instances (October 1, 2018, March 26, 2019, and August 7, 2019) where the vacuum pump and dilution air fan were operating and the combustion air flow was less than 12,000 acfm.

ii. During the FY2019 inspection, the inspector(s) documented the following. The north rollup door and frame on the bulk solids building had been replaced and the gap where the frame meets the wall of the building had not been sealed. This gap was not an allowable NDO in Tables 1 and 2.

iii. During the FY2019 inspection, the inspector(s) documented the following. There was a fist-sized hole along the gap between the north rollup door frame and the bulk solids building where the concrete of the wall had broken out. This hole was not an allowable NDO in Tables 1 and 2.

iv. During the FY2019 inspection, the inspector(s) documented the following. The caulking on the gap between the center rollup door frame and the bulk solids building only went part way up. This gap was not an allowable NDO in Tables 1 and 2.

v. During the FY2019 inspection, the inspector(s) documented the following. CHA performed a smoke test on these gaps and hole during the inspection. The smoke was not pulled into the gaps and hole.

vi. During the FY2019 inspection, the inspector(s) documented the following. There was a large gap (several inches wide) along the edge of the seal closest to the door on the NDO below the apron feeder feed chute during backup operations. This gap was not an allowable NDO in Table 2. This gap had not been fixed when it was inspected again three days later.

vii. During the FY2019 inspection, the inspector(s) documented the following. An access door on the east side of the shredder had not been completely closed during normal operations, leaving a gap of more than an inch. This gap was larger than the allowable NDO in Table 1.

24. Factual details supporting Finding 29:

a. Condition 5.A.6 of the Permit and the Fume Management Plan, Attachment 14 specifies that the carbon in the backup carbon adsorption system be replaced on a regular predetermined time interval based on the flow rates and VOC concentrations in the closed vent system. The carbon replacement intervals are re-determined annually, and

were last calculated and implemented on July 18, 2019. The carbon replacement interval was set at 226 hours.

i. On September 24, 2019, (in a letter dated September 23, 2019 (DSHW-2019-011803)) CHA notified the Director that on September 18, 2019, the CHA discovered that the east carbon bed was operated for 235.22 hours, which exceeded the backup carbon adsorption system carbon bed life of 226 hours specified on July 18, 2019

25. Factual details supporting Finding 30:

a. Condition 5.D.46 of the Permit limits the feed rate of mercury to the incinerator to 0.76 pounds per hour on a 12-hour rolling average basis.

i. On November 9, 2018, (in a letter dated November 8, 2018 (DSHW-2018-010921)) CHA notified the Director that on November 1, 2018, CHA discovered that it had inadvertently incinerated a drum containing 1.78 pounds of mercury, which exceeded the maximum allowable feed rate for mercury

26. Factual details supporting Finding 31:

a. Condition 5.D.51 of the Permit requires CHA to conduct sufficient analysis of the feed, in accordance with the waste analysis requirements of Conditions 2.D. and 5.D., to verify that the waste fed to the incinerator is within the physical and chemical composition limits specified in the Permit. Condition 2.D of the Permit requires CHA to comply with the waste analysis procedures specified in Attachment 1 of the Permit. Section 3.0 of the WAP in Attachment 1 specifies that the incineration parameters must be determined prior to incineration, and Table 4 lists those incineration parameters. The list includes PCBs.

i. During the FY2019 inspection, the inspector(s) documented the following. CHA determined that drum 81205084 was burned in place of drum 81205085 (i.e., waste tracking showed that 81205085 was incinerated, but it was really 81205084, leaving 81205085 as a zero weight drum in Building E5 and 81205084 as a missing drum). There was no incineration chemistry for 81205084, in violation of Section 3.0 of the WAP.

ii. During the FY2019 inspection, the inspector(s) documented the following. Aragonite did not include PCBs in any of their analyses and calculations when developing the incineration chemistries for the waste categories/DOT hazard class combinations of wastes that cannot be sampled or analyzed.

iii. During the FY2019 inspection, the inspector(s) documented the following. Item 82337290 was a PCB transformer. It was shipped to CHA as “polychlorinated biphenyls, liquid” and was characterized as debris. The PCB concentration was not measured and was assigned a value of zero PCBs

27. Factual details supporting Finding 32:

a. R315-262-15 UAC specifies the requirements for satellite accumulation areas for generators. R315-262-15(a)(5)(i) and (ii) UAC require that CHA mark or label containers of hazardous waste in satellite accumulation areas with the words "hazardous waste" and an indication of the hazards of the contents.

i. During the FY2019 inspection, the inspector(s) documented the following. CHA operates satellite accumulation areas in the laboratories. A container in the satellite accumulation area in the metals instrument lab was not properly labeled.

28. Factual details supporting Finding 33:

a. R315-262-17 UAC allows generators to accumulate hazardous waste in containers provided the waste remain on site for no more than 90 days; and the containers always are closed, except when it is necessary to add or remove waste.

i. On June 18, 2019, (in a letter dated June 13, 2019 (DSHW-2019-006022)) CHA notified the Director that on June 12, 2019, the facility discovered that it held two rolloffs of site-generated hazardous waste longer than 90 days.

ii. On August 20, 2019, (in a letter dated August 16, 2019 (DSHW-2019-009512)) CHA notified the Director that on August 13, 2019, the facility discovered that it held a rolloff of site-generated hazardous waste longer than 90 days.

iii. During the FY2019 inspection, the inspector(s) documented the following. Holes/punctures were observed in the tarps/covers on eight rolloff boxes containing hazardous waste residue from the incinerator.

iv. During the FY2019 inspection, the inspector(s) documented the following. The tarp was not fully covering rolloff box AGA-12-016, and hazardous waste residues were present on the top surfaces of the exposed corner.

29. Factual details supporting Findings, paragraph 34:

a. R315-268-3(c) UAC prohibits the combustion of wastes with the codes listed in Appendix XI of R315-268 UAC, including the waste code D009, toxicity characteristic for mercury.

i. On November 9, 2018, (in a letter dated November 8, 2018 (DSHW-2018-010921)) CHA notified the Director that on November 1, 2018, the facility discovered that it had inadvertently incinerated a drum containing mercuric oxide and mercuric chloride. It carried the D009 waste code.

ii. On September 3, 2019, (in a letter dated August 28, 2019 (DSHW-2019-010441)) CHA notified the Director that on August 27, 2019, the facility discovered that it had inadvertently incinerated a drum containing mercuric chloride. It carried the D009 waste code

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1. Article Addressed to:

WILLIAM SIMMONS, GENERAL MANAGER
CLEAN HARBORS ARAGONITE, LLC
P.O. BOX 1339
GRANTSVILLE, UT 84029

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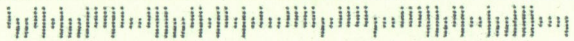

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In the Matter of:	:	**STIPULATION AND CONSENT ORDER**
Clean Harbors Aragonite, LLC (CHA) Notice of Violation No. 2001004 UTD 981 552 177	: :	**No. 2004048**

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This **STIPULATION AND CONSENT ORDER** is issued by the DIRECTOR OF THE DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code §19-6-101, et seq. The Director has authority to issue such ORDERS in accordance with Utah Code § 19-6-112.

JURISDICTION

1. The Director has jurisdiction over the subject matter of this CONSENT ORDER pursuant to Utah Code §19-6-112 and jurisdiction over the Aragonite facility owned and operated by Clean Harbors Aragonite, LLC (CHA). CHA and the Director are parties to this agreement.

2. The Board has authority to review this CONSENT ORDER pursuant to Utah Code §19-6-104(e), and jurisdiction over the Aragonite facility.

FINDINGS

3. Clean Harbors Aragonite, LLC (CHA) is a Delaware Limited Liability Company registered to do business in the State of Utah and is a subsidiary of Clean Harbors, Inc., a Massachusetts corporation also registered to do business in the State of Utah. CHA is the owner and operator of the Aragonite facility.

4. CHA is a "person" as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules), the Act, and the Permit.

5. The Aragonite facility is a commercial hazardous waste incinerator, transfer, and storage facility located in Tooele County, Utah, and is operated under the provisions of the State-issued Hazardous Waste Part B Permit issued on March 30, 1990, as modified (the Permit). The Permit was renewed and reissued most recently on September 28, 2012.

6. Authorized representatives of the Director conducted a hazardous waste inspection at the Aragonite facility from September 9 through September 26, 2019 (the FY2019 inspection). In addition, the facility self-reported several non-compliance issues during the 2019 fiscal year (October 1, 2018 through September 30, 2019). Based on findings documented during the FY2019 inspection and the self-reported non-compliance, the Director issued NOTICE OF VIOLATION

No. 2001004 (the NOV) on April 8, 2020, alleging violations by CHA of its Permit and the Utah Administrative Code.

7. The U.S. Environmental Protection Agency (EPA) informed the Division that on August 23, 2019, EPA sent a "Request for Information" to Clean Harbors Environmental Services (DSHW-2019-018483) requesting waste profiles associated with certain identified waste at CHA and other Clean Harbors facilities. On January 7, 2020, EPA notified Division staff that EPA received 6,648 waste profiles from Clean Harbors in response to EPA's August 23, 2019, Request for Information.

8. On or about April 13, 2021, the Director agreed with EPA to postpone further enforcement actions related to CHA's use of generic profiles until such time that EPA has notified the Division that EPA's review of the Clean Harbors waste profiles described in paragraph 7 is complete and EPA has determined whether it will take any related enforcement actions.

9. CHA filed a response to the NOV on April 29, 2020 (DSHW-2020-006766). CHA submitted additional information related to the NOV on June 1, 2020 (DSHW-2020-008054). CHA further addressed violations cited in the NOV on September 28, 2020 (DSHW-2020-013944). On January 14, 2021 (DSHW-2021-000883) and February 28, 2021 (DSHW-2021-003458), CHA expanded its position related to its continued use of generic waste profile.

STIPULATION AND CONSENT ORDER

10. The parties now wish to fully resolve Notice of Violation No. 2001004 (NOV) without further administrative or judicial proceedings as follows:

    10.1. The parties have not resolved Notice of Violation No. 2001004, Violation 7, related to CHA's use of generic profiles.

    10.2. As a result of finding 8, the Director withdraws Notice of Violation No. 2001004, Violation 7. In accordance with applicable laws, the Director may reinstate Notice of Violation No. 2001004, Violation 7 at some future time.

    10.3. Within 90 days of the effective date of this CONSENT ORDER, CHA hereby stipulates to document in real time all wastes that leave the facility, all waste that is received at the facility, including waste that later returned following shipment offsite, and all wastes that leave the facility to go to a third-party receiving facility. The documentation may be accomplished by tracking these shipments in the waste tracking system or by tracking them separately in such a way that a list of these wastes and the applicable tracking information can be readily provided to inspectors upon request.

    10.4. In addition to paragraphs 10.1 through 10.3, in full settlement of the remaining violations alleged in NOV No. 2001004, CHA shall pay a penalty of $80,630.00 (eighty thousand six hundred thirty dollars). Payment shall be made within thirty days of entry into this CONSENT ORDER. Payment shall be made to the State of Utah, Department of Environmental Quality, c/o Director, Division of Waste Management and Radiation

Control, P.O. Box 144880, Salt Lake City, Utah 84114-4880. This amount has been determined in accordance with the Division's Civil Penalty Policy (R315-102 of the Rules), which considers such factors as the gravity of the violation, the extent of deviation from the rules, the potential for harm to human health and the environment, good faith efforts to comply, and other factors.

EFFECT OF CONSENT ORDER

11. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of its right to initiate enforcement actions, including civil penalties, against CHA (i) related to reinstatement of Notice of Violation No. 2001004, Violation 7 or (ii) in the event of future non-compliance with this CONSENT ORDER, with the Act, with the Rules, or with the Permit; nor shall the State be precluded in any way from taking appropriate action should such a situation arise again at the Aragonite facility. However, entry into this CONSENT ORDER shall relieve CHA of all liability for violations which did arise or could have arisen with respect to the allegations contained in the NOV except as related to withdrawn Violation 7.

12. This CONSENT ORDER shall be subject to public notice and comment for a period of at least 30 days ("Comment Period") in accordance with Utah Admin. Code R315-124-34. The Director reserves the right to withdraw or withhold its consent if any comment received during the Comment Period disclose facts or consideration indicating the **CONSENT ORDER** is inappropriate, improper, or inadequate.

CONSENT ORDER SIGNATORY

13. The CHA signatory below, certifies that he is authorized to sign, obligate, and enter into this CONSENT ORDER, on behalf of Clean Harbors Aragonite, LLC to resolve NOV No. 2001004.

EFFECTIVE DATE

14. This **CONSENT ORDER** shall become effective upon execution by CHA and the Director.

Dated this_____day of_____, 2021.

CLEAN HARBORS ARAGONITE, LLC	DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL
_____	_____
Eric Gerstenberg, President	Douglas J. Hansen, Director

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 1

Violation Description: **WAP SOPs**

Note: Numbering matches numbering in spreadsheet

1. Gravity Based Penalty: $4,160

   (a) Potential for Harm: **MODERATE.** Not following the SOPs could lead to inaccurate information about the wastes, which in turn could lead to mismanagement.

   (b) Extent of Deviation: **MODERATE.** Although CHA had SOPs in place, the errors noted would have affected a significant number of the samples analyzed.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were14 items cited in the NOV. Items b.v, d.i, and e.ii were contested by CHA. Although DWMRC determined that these are important issues that need to be corrected, they have been dropped from the penalty calculations. The high end of the penalty range was used to account for the other violations.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The analyses were being performed and the mistakes that were being made would not save any significant time or money.

16. Adjustment for Ability to Pay: N/A

Total: **$4,160**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 2

Violation Description: **BTU Analysis**

1. Gravity Based Penalty: $0

   (a) Potential for Harm: **N/A**

   (b) Extent of Deviation: **N/A**

2. Multiple/Multi-day: $0

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV. CHA disputes this violation. CHA provided additional information confirming that this was not a violation. The violation has been dropped.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – N/A

16. Adjustment for Ability to Pay: N/A

Total: **$0**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 3

Violation Description: **Vent Opening Reports**

1. Gravity Based Penalty: $100

   (a) Potential for Harm: **MINOR.** There would be no direct impact to human health or the environment from the late reports. There were incident reports to document the vent openings for the reports that weren't submitted.

   (b) Extent of Deviation: **MINOR.** Most of the reports were submitted and submitted on time. The reports that were late were a few days late, at most.

2. Multiple/Multi-day: $84

   (a) Number of Violations or Days of Violation: There were six instances cited in the NOV. The gravity-based penalty was used as the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time required to write and submit these reports would be minimal.

16. Adjustment for Ability to Pay: N/A

Total: **$520**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 4

Violation Description: **Baghouse Bypass Reports**

1. Gravity Based Penalty: $100

   (a) Potential for Harm: **MINOR.** There would be no direct impact to human health or the environment from the late reports. There were incident reports to document the baghouse bypasses for the reports that weren't submitted.

   (b) Extent of Deviation: **MINOR.** Most of the reports were submitted and submitted on time. The reports that were late were only a few days late, at most.

2. Multiple/Multi-day: $140

   (a) Number of Violations or Days of Violation: There were four instances cited in the NOV. The gravity-based penalty was used since the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time required to write and submit these reports would be minimal.

16. Adjustment for Ability to Pay: N/A

Total: **$520**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 5

Violation Description: **WAP QAP**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Not following the quality assurance procedures could lead to inaccurate information about the wastes, which in turn could lead to mismanagement.

   (b) Extent of Deviation: **MINOR.** CHA was following some aspects of the QAP.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were 11 items cited in the NOV. Items i, ii, vi, viii, ix, x, and xi were contested by CHA.
   - (item i) It is important that CHA follow the Permit QAP. If a more detailed plan is needed, CHA should incorporate all requirements for both programs into the Permit QAP and ensure that it is being followed. However, it appears that there may have been a miscommunication during the inspection, so item i has been dropped from the penalty calculation.
   - (items ii and ix) DWMRC believes that the QAO must be independent from the people generating the data and should report directly to the General Manager. Also, the QAP requires the QAO to be a separate person. Moreover, based on all the issues found, it appears that the Lab Manager did not properly QA themselves. This is a critical position to ensure data quality and proper waste management.
   - (item vi) CHA responded that the cyanide audit failure corrective action report was done. However, the audit report was not completed and did not specify who the responsible party was that caused the incident.
   - (item viii) The corrective action report for the BTU corrective action was not completed/filled out properly.
   - (item x) DWMRC has determined that there was insufficient evidence to show that the sample bottles were improperly labeled at the time of sampling (the bottles in the picture were staged prior to sampling). Item x has been dropped from the penalty calculations.
   - (item xi) DWMRC disagrees with CHA's interpretation of Aragonite-6 (Radioactivity Screen). The method was intended to be used on all wastes entering the facility. It was also noted that the method was being performed incorrectly in the E-5 lab and Admin lab by not opening the jar and placing the monitor over the open container. The container will shield some of the radioactivity and the results will be biased low if measured through the container. However, DWMRC agrees that the language in the Permit is ambiguous, and the best remedy is to modify the Permit, rather than pursue further enforcement action. Item xi has therefore been dropped from the penalty calculations.

   The other violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – Although the cost avoided by not hiring a QAO would be substantial, the duties of a QAO could have been assigned to someone at the facility with knowledge of laboratory operations who was independent of the chemists and management.

16. Adjustment for Ability to Pay: N/A

Total: **$2,080**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 6

Violation Description: **Categorize Waste**

1. Gravity Based Penalty: $100

   (a) Potential for Harm: **MINOR.** The mischaracterization would affect the incineration chemistry for the wastes when fed to the incinerator. The chemistries of the various categories are fairly similar, and the contribution of each container to the overall incineration feed chemistry would be minimal.

   (b) Extent of Deviation: **MINOR.** Most of the wastes were categorized correctly.

2. Multiple/Multi-day: $140

   (a) Number of Violations or Days of Violation: There were four instances cited in the NOV. The gravity-based penalty was used as the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There would be no additional time or effort needed to properly categorize these wastes.

16. Adjustment for Ability to Pay: N/A

Total: **$520**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 7

Violation Description: **Waste Profiles**

1. Gravity Based Penalty: $0

   (a) Potential for Harm: **N/A**

   (b) Extent of Deviation: **N/A**

   As a result of EPA's ongoing waste profile review, DWMRC has agreed to withdraw this violation until EPA has determined what enforcement action, if any, it will pursue. DWMRC may reinstate this penalty in accordance with applicable laws and rules.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were 3 items cited, CHA contests all of them. DWMRC disagrees with CHA's position. These "generic" profiles are overly broad and do not meet the requirements of the Permit. As noted above, DWMRC has agreed to withdraw this violation until EPA has determined what enforcement action, if any, it will pursue.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The cost of completing necessary profiles would be charged to the customer.

16. Adjustment for Ability to Pay: N/A

Total: **$0**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 8

Violation Description: **Waste Analysis**

1. Gravity Based Penalty: $520

   (a) Potential for Harm: **MINOR.** At the time of the inspection, CHA had not implemented significant portions of the revised waste analysis procedures adopted in May 2016. CHA was performing waste analysis under the procedures prior to May 2016. The mischaracterizations cited would affect the incineration chemistry for the wastes when fed to the incinerator. The chemistries were fairly similar, and the contribution of each container to the overall incineration feed chemistry would be minimal.

   (b) Extent of Deviation: **MODERATE.** Although CHA has put considerable time and effort this year into updating the analyses adopted in May 2016, over the past three years very little progress had been made.

2. Multiple/Multi-day: $520

   (a) Number of Violations or Days of Violation: There were ten instances cited in the NOV. Item x was contested by CHA. It has been dropped from the penalty calculations. The gravity-based penalty was used as the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $3120 – Since CHA must still conduct these analyses; it would be a delayed cost, rather than an avoided cost. Assuming 10 samples each year for three years for half of 48 waste category/hazard class combinations and $240 per sample at 1.018% yield.

16. Adjustment for Ability to Pay: N/A

Total: **$7,800**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 9

Violation Description: **Inspections**

1. Gravity Based Penalty: $130

   (a) Potential for Harm: **MINOR.** There would be no direct impact to human health or the environment from the late or missing reports – the deficient items would not have been corrected any earlier. DWMRC accepts CHA's assertion that the inspection was likely conducted, and the paperwork misplaced.

   (b) Extent of Deviation: **MINOR.** Most of the reports were submitted and submitted on time. Most of the inspections were done and documented properly.

2. Multiple/Multi-day: $130

   (a) Number of Violations or Days of Violation: There were four instances cited in the NOV. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time required to write and submit these reports would be minimal.

16. Adjustment for Ability to Pay: N/A

Total: **$520**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 10

Violation Description: **Personnel Training**

1. Gravity Based Penalty: $120

   (a) Potential for Harm: **MINOR.** Most of the required training was completed; there were a few that were completed late or not documented properly.

   (b) Extent of Deviation: **MINOR.** Most of the training was conducted as required. However, many of the courses listed in the training summaries did not have documentation in the training files.

2. Multiple/Multi-day: $100

   (a) Number of Violations or Days of Violation: There were twelve instances cited in the NOV. CHA contested and provided missing documentation and/or explanations for ten of the instances. There was still missing documentation for contested items vii, viii, and x. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The cost for the time to conduct the training would be insignificant.

16. Adjustment for Ability to Pay: N/A

Total: **$520**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 11

Violation Description: **Emergency Equipment**

1. Gravity Based Penalty: $155

   (a) Potential for Harm: **MINOR.** Although access to the emergency shower/eye wash was blocked an individual could move the ladder. The ladder that was blocking the emergency shower/eye wash was moved immediately during the inspection.

   (b) Extent of Deviation: **MINOR.** The emergency equipment is accessible most of the time.

2. Multiple/Multi-day: $155

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There was no economic benefit to having the emergency shower/eye wash blocked.

16. Adjustment for Ability to Pay: N/A

Total: **$155**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 12

Violation Description: **Manifests**

1. Gravity Based Penalty: $7,800

   (a) Potential for Harm: **MAJOR.** Shipping wastes without a manifest and not properly addressing discrepancies could lead to lost wastes and mismanagement.

   (b) Extent of Deviation: **MODERATE.** Problems were found with several manifests.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were five instances cited in the NOV. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time required to prepare a manifest and properly note discrepancies would be insignificant.

16. Adjustment for Ability to Pay: N/A

Total: **$7,800**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 13

Violation Description: **PCB Reporting**

1. Gravity Based Penalty: $0

   (a) Potential for Harm: **N/A**

   (b) Extent of Deviation: **N/A**

2. Multiple/Multi-day: $0

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV. CHA disputes this violation. The violation has been dropped.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – N/A

16. Adjustment for Ability to Pay: N/A

Total: **$0**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 14

Violation Description: **Spent Carbon Tracking**

1. Gravity Based Penalty: $700

   (a) Potential for Harm: **MINOR.** The material was managed appropriately; the violations related to the recordkeeping.

   (b) Extent of Deviation: **MODERATE.** CHA did not comply with most of the requirements for accepting and tracking this site-generated waste.

2. Multiple/Multi-day: $690

   (a) Number of Violations or Days of Violation: There were three instances cited in the NOV. The gravity-based penalty was used as the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time required to properly track this waste would be insignificant.

16. Adjustment for Ability to Pay: N/A

Total: **$2,080**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 15

Violation Description: **Rejects > 60 Days**

1. Gravity Based Penalty: $5,270

   (a) Potential for Harm: **MAJOR.** Rejected wastes are usually wastes that present some type of hazard that CHA is not prepared to manage. Having the waste on site for an extended period of time increases the risks these wastes pose.

   (b) Extent of Deviation: **MINOR.** Most of the reject containers are managed in a timely manner.

2. Multiple/Multi-day: $5,270

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The containers were shipped off-site, just not in a timely manner.

16. Adjustment for Ability to Pay: N/A

Total: **$5,270**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 16

Violation Description: **Green Barcodes**

1. Gravity Based Penalty: $155

   (a) Potential for Harm: **MINOR.** Although improper labeling could lead to mismanagement, there are other systems in place to ensure they would not be improperly managed.

   (b) Extent of Deviation: **MINOR.** Most of the containers were labeled correctly.

2. Multiple/Multi-day: $155

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time required to properly label the containers would be insignificant.

16. Adjustment for Ability to Pay: N/A

Total: **$155**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 17

Violation Description: **Ignitables**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Storing ignitables in an area not designed and equipped to properly manage the hazards would create a substantial risk. However, the ignitables were stored inappropriately for a relatively short period of time.

   (b) Extent of Deviation: **MINOR.** Most of the ignitables are stored in properly designated areas. These containers were immediately moved to an appropriate storage area.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were three instances cited in the NOV. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There would be no economic benefit as there are other places at the facility where these materials could have been stored.

16. Adjustment for Ability to Pay: N/A

Total: **$2,080**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 18

Violation Description: **Incompatibles**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Storing incompatibles together would create a substantial risk. The incompatibles were stored inappropriately for a relatively short period of time.

   (b) Extent of Deviation: **MINOR.** Most of the incompatibles are segregated. These containers were immediately separated and moved to appropriate storage areas.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were two instances cited in the NOV. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There would be no economic benefit as there are other places at the facility where these materials could have been stored.

16. Adjustment for Ability to Pay: N/A

Total: **$2,080**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 19

Violation Description: **Transport Vehicle > 10 days**

1. Gravity Based Penalty: $155

   (a) Potential for Harm: **MINOR.** The violation involved one truck for a short period of time.

   (b) Extent of Deviation: **MINOR.** CHA has been operating for months under a temporary extension allowing them to have longer than ten days to offload incoming vehicles. Hundreds of transport vehicles were not unloaded within the ten-day limit under this extension, where this only involved one vehicle.

2. Multiple/Multi-day: $155

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There was no economic benefit.

16. Adjustment for Ability to Pay: N/A

Total: **$155**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 20

Violation Description: **Aisle Space**

1. Gravity Based Penalty: $1,560

   (a) Potential for Harm: **MODERATE.** Not having adequate access to all of the containers could present a significant risk, especially during an emergency. The problem occurred in one small area that was quickly remedied.

   (b) Extent of Deviation: **MINOR.** CHA maintains sufficient aisle space most of the time.

2. Multiple/Multi-day: $1,560

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There was room to place the containers such that there would have been adequate aisle space.

16. Adjustment for Ability to Pay: N/A

Total: **$1,560**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 21

Violation Description: **Waste Tracking**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Improper tracking of wastes could lead to lost wastes and mismanagement.

   (b) Extent of Deviation: **MINOR.** Most items were tracked correctly.

2. Multiple/Multi-day: $2,080

   (a) Number of Violations or Days of Violation: There were eight instances cited in the NOV. Items i through v were contested by CHA. They were dropped from the penalty calculation. The gravity-based penalty was used because the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There is no economic benefit to track wastes incorrectly.

16. Adjustment for Ability to Pay: N/A

Total: **$6,240**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 22

Violation Description: **Wastes not on Pallets**

1. Gravity Based Penalty: $155

   (a) Potential for Harm: **MINOR.** Because there were only two drums, the drums could have easily been moved without pallets. They were moved as soon as the issue was discovered.

   (b) Extent of Deviation: **MINOR.** Most of the wastes are stored on pallets.

2. Multiple/Multi-day: $155

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There was already plenty of pallets on site.

16. Adjustment for Ability to Pay: N/A

Total: **$155**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 23

Violation Description: **Tank Certifications**

1. Gravity Based Penalty: $0

   (a) Potential for Harm: **N/A**

   (b) Extent of Deviation: **N/A**

2. Multiple/Multi-day: $0

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV. It was contested by CHA. DWMRC determined that the language in the Permit is ambiguous, and the best remedy is to modify the Permit, rather than pursue further enforcement action.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – N/A

16. Adjustment for Ability to Pay: N/A

Total: **$0**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 24

Violation Description: **Overfill Bulk Solids Tanks**

1. Gravity Based Penalty: $155

   (a) Potential for Harm: **MINOR.** Because the waste is solid, there is no concern with spillage due to overfilling. The potential for harm would be due to exceeding capacity and having insufficient financial assurance, but there was adequate room in the other tanks for the excess waste.

   (b) Extent of Deviation: **MINOR.** The tanks are kept within capacity most of the time. The overall capacity was not exceeded as there was room for the wastes in the other bulk solids tanks.

2. Multiple/Multi-day: $155

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – There was room for the material in the other tanks.

16. Adjustment for Ability to Pay: N/A

Total: **$155**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 25

Violation Description: **O_2 >5% in Hydrocarbon Vent**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Elevated levels of oxygen could produce an explosive atmosphere.

   (b) Extent of Deviation: **MINOR.** Most of the incidents of elevated oxygen concentration in the hydrocarbon vent system are investigated and documented.

2. Multiple/Multi-day: $2,080

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The time and effort required to investigate and document the high oxygen concentration would be minimal.

16. Adjustment for Ability to Pay: N/A

Total: **$2,080**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 26

Violation Description: **Fume Management System**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Inadequate operation of the fume management system could produce fugitive emissions.

   (b) Extent of Deviation: **MINOR.** CHA was operating the fume management system and most of the components were operating correctly.

2. Multiple/Multi-day: $2,080

   (a) Number of Violations or Days of Violation: There were seven instances cited in the NOV. Items ii, iv, and v were contested by CHA. Items ii and iv have been dropped from the penalty calculations. DWMRC does not agree with the CHA response to item v. CHA personnel were present and witnessed the smoke test and did not disagree at the time that smoke was not being pulled into the openings. The gravity-based penalty was used as the violations were separate and distinct, rather than multi-day.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – Repairs were made immediately. There would be insignificant economic benefit in the delay of repairs.

16. Adjustment for Ability to Pay: N/A

Total: **$10,400**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 27

Violation Description: **Exceeding Carbon Bed Life**

1. Gravity Based Penalty: $2,080

   (a) Potential for Harm: **MODERATE.** Exceeding the carbon bed life could produce fugitive emissions.

   (b) Extent of Deviation: **MINOR.** The carbon had been in use just slightly longer than the calculated bed life.

2. Multiple/Multi-day: $2,080

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The length of time the bed life was exceeded was insignificant compared to normal carbon bed lives.

16. Adjustment for Ability to Pay: N/A

Total: **$2,080**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 28

Violation Description: **Exceeding Mercury Feed Rate**

1. Gravity Based Penalty: $5,270

   (a) Potential for Harm: **MAJOR.** Exceeding the mercury feed rate could result in excess mercury emissions.

   (b) Extent of Deviation: **MINOR.** The amount of prohibited waste fed was minimal.

2. Multiple/Multi-day: $5,270

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The economic benefit of not having to send the waste to another TSD would be offset by the cost CHA incurred by incinerating it.

16. Adjustment for Ability to Pay: N/A

Total: **$5,270**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 29

Violation Description: **Incineration Parameters**

1. Gravity Based Penalty: $7,800

   (a) Potential for Harm: **MAJOR.** Not properly analyzing the waste feed could result in excess emissions.

   (b) Extent of Deviation: **MINOR.** This only affected the waste matrices that weren't being analyzed

2. Multiple/Multi-day: $7,800

   (a) Number of Violations or Days of Violation: There were three instances cited in the NOV. The high end of the penalty range was used to account for the other violations.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The economic benefit would be addressed with violation #8.

16. Adjustment for Ability to Pay: N/A

Total: **$7,800**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 30

Violation Description: **Satellite Accumulation Area**

1. Gravity Based Penalty: $155

   (a) Potential for Harm: **MINOR.** Only one container was not labeled properly. There was no mismanagement of the waste.

   (b) Extent of Deviation: **MINOR.** Only one container was not labeled properly. It was immediately corrected.

2. Multiple/Multi-day: $155

   (a) Number of Violations or Days of Violation: There was one instance cited in the NOV.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The cost of labeling the container would be insignificant.

16. Adjustment for Ability to Pay: N/A

Total: **$155**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 31

Violation Description: **Generator Requirements**

1. Gravity Based Penalty: $520

   (a) Potential for Harm: **MINOR.** Because it was treated waste, there would be little chance of fugitive emissions from the holes and open corner. The wastes were shipped off-site shortly after the 90-day limit.

   (b) Extent of Deviation: **MODERATE.** The holes were very small. The wastes were shipped off-site as soon as they were discovered. All problems were resolved quickly. No mismanagement of wastes occurred.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were four instances cited in the NOV. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The issues were corrected immediately, so there was no economic benefit.

16. Adjustment for Ability to Pay: N/A

Total: **$520**

NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER

NOV # 2001004 Violation Number from NOV 32

Violation Description: **Incinerating Mercury**

1. Gravity Based Penalty: $7,800

   (a) Potential for Harm: **MAJOR.** Feeding prohibited wastes would increase the emissions of mercury.

   (b) Extent of Deviation: **MODERATE.** Amount of prohibited waste fed was minimal.

2. Multiple/Multi-day: N/A

   (a) Number of Violations or Days of Violation: There were two instances cited in the NOV. The multiple violations were accounted for in the gravity-based penalty.

5. Adjustment for Good Faith: N/A

6. Adjustment for Willfulness/Negligence: N/A

7. Adjustment for History of Compliance or Noncompliance: N/A

8. Adjustment for Other Unique Factors: N/A

14. Adjustment for Economic Benefit: $0 – The economic benefit of not having to send the waste to another TSD would be offset by the cost CHA incurred by incinerating it.

16. Adjustment for Ability to Pay: N/A

Total: **$7,800**

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Answer to Question Regarding Mammography Imaging Medical Physicists Annual Renewal
June 10, 2021

What is the issue before the Board?	Current state rules in R313-28-120 have been interpreted to require Mammography Imaging Medical Physicists (MIMPs)to annually renew their certifications. R313-28-120(2)(b) requires MIMPs to perform at least two surveys during the 12-month period from June 1 to May 31 to remain certified by the Board. The Division was asked why this is an annual requirement and not every two years.
What is the historical background or context for this issue?	In the May 13, 2021 Board meeting, Mr. Dennis Riding asked why MIMPs are required to renew their certifications annually instead of less frequently like every two years. Mr. Tom Ball, Planning and Technical Support Section Manager did not have an adequate answer at the time and promised to research the issue and return to the Board with an answer. Research into the issue revealed that current state rules do not have a specific requirement for annual renewal. R313-28-120(2)(b) states that MIMPs are required to perform at least two surveys during the 12-month period from June 1 and May 31 to remain certified. The Division has interpreted this rule to require the annual renewal of certification. The Division was not able to locate any documentation regarding the basis for this interpretation. Further research into the rule language revealed that current state rules are not in sync with rules currently in place at the federal level. 21 CFR 900.12 contains the Food and Drug Administration (FDA) quality standards and certification requirements for MIMPs. 21 CFR 900.12(3)(iii)(B) requires MIMPs to have surveyed at least two facilities and six mammography units during a 24-month period. The research into the FDA regulations revealed that the 24-month requirement has been in place since the creation of the regulations in 1997. The Division was not able to locate any documentation containing the reasons that 12-months was used in state rules instead of 24-months. Current Division personnel working in the X-ray program do not believe there are any reasons why the recertification requirement could not be changed to 24-months.
What is the governing statutory or regulatory citation?	N/A
Is Board action required?	No. This is an informational item.
What is the Division Director's recommendation?	The Division will review the existing state rules for MIMP recertification and will return to the Board at a future meeting with proposed changes to these rules.
Where can more information be obtained?	Please contact Tom Ball by email at tball@utah.gov or by phone at (801) 536-0251.

DSHW-2021-007951