



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 February 10, 2022 at 1:30 pm at the Utah Department of Environmental Quality, (Multi-Agency State Office Building) Conference Room #1015, 195 North 1950 West, SLC.

Board members and interested persons may participate electronically/telephonically.

Join via the Internet: meet.google.com/gad-sxsd-uvs

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 January 13, 2022, Board meeting Tab 1
(Board Action Item)
- V. Underground Storage Tanks Update..... Tab 2
- VI. Underground Storage Tank Rules..... Tab 3
 - A. Five-Year Review of Utah Underground Storage Tank Rules R311-200 through R311-212 (Information Item).
- VII. Administrative Rules Tab 4
 - A. Approval to proceed with formal rulemaking and public comment period on proposed rule changes to Utah Administrative Code Rule R313-28-140 of the Radiation Control Rules, to amend the qualifications for mammography imaging medical physicists in the State of Utah to ensure consistency with the federal regulations overseen by the Food and Drug Administration. The changes being made will also reduce the regulatory burden on mammography imaging medical physicists by changing the frequency of recertifications from annually to every three years **(Board Action Item)**.

(Over)

- B. Final adoption of proposed rule changes to Utah Administrative Code Rule R315-307 of the Solid Waste Rules to clarify the applicability statements to include Director discretion to approve only landtreatment disposal operations that provide an agronomic benefit and remove high-chloride wastes as being allowed for landtreatment disposal because they do not provide an agronomic benefit (**Board Action Item**).

VIII. Low-Level Radioactive Waste..... Tab 5

- A. EnergySolutions request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose, in EnergySolutions' Mixed Waste Landfill Cell, waste containing the D009 or U151 High Mercury-Organic Subcategory and High Mercury-Inorganic Subcategory hazardous waste codes that have been treated using stabilization/amalgamation technologies (Information Item).

IX. Director's Report/Legislative Update.

X. Other Business.

- A. Miscellaneous Information Items.
- B. Scheduling of next Board Meeting (March 10, 2022).

XI. Adjourn.

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

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
Multi-Agency State Office Building, (Conf. Room #1015)
195 North 1950 West, SLC
January 13, 2022
1:30 p.m.

Board Members participating at Anchor Location: Brett Mickelson (Chair), Vern Rogers, Kim Shelley, Shane Whitney

Board Members Participating Virtually: Richard Codell, Danielle Endres, Steve McIff, Nathan Rich, Scott Wardle

Board Members Excused: Dennis Riding (Vice-Chair), Mark Franc

UDEQ staff members participating at Anchor Location: Brent Everett, Doug Hansen, Tom Ball, Arlene Lovato, Deborah Ng, Boyd Swenson, Adam Wingate

Others attending at Anchor Location: Tyson Hone, William Simmons

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

I. Call to Order.

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

II. Public Comments on Agenda Items – None.

III. Declarations of Conflict of Interest.

Shane Whitney declared a conflict of interest and abstained from voting on Agenda Item VII. Hazardous Waste Section. A. Approval of Proposed Stipulation and Consent Order between the Director and Clean Harbors Aragonite, LLC.

IV. Approval of the meeting minutes for the December 9, 2021 Board meeting (Board Action Item).

It was moved by Scott Wardle and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the December 9, 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 November 2021, was \$24,529,959.00. The preliminary estimate of the cash balance of the PST Trust Fund for the end of December 2021, was \$24,497,361.00. The DERR continues to watch the balance of the PST Trust Fund closely to ensure sufficient cash is available to provide coverage of qualified claims for releases.

Director Everett shared with the Board statistics for the underground storage tank (UST) program for the past year. There were 918 compliance inspections completed in 2021 with an overall compliance rate of 78%, up from 74% last year. There were 104 USTs closed last year and 105 new USTs installed. There are currently 1300 facilities with USTs in Utah, 1289 of these facilities have active certificates of compliance (COC). The DERR focuses on compliance and prevention in order to mitigate future releases and save money for both the PST Trust Fund and facility owners and operators.

Director Everett also thanked the Board for the recent passage of rule changes for the UST program. He also mentioned that rule changes will be coming before the Board this spring for the incorporation of aboveground storage tanks into the program based on legislation in 2021.

VI. X. Ray Program.

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

Tom Ball, Planning and Technical Support Section Manager of the Division of Waste Management and Radiation Control, reviewed the request for the Board's approval of new, qualified Mammography Imaging Medical Physicist.

Mr. Ball informed the Board that an individual referred to as Mammography Imaging Medical Physicist (MIMP) must submit an application for review of qualifications to be certified by the Board. These physicists perform radiation surveys and evaluate the quality control programs of the facilities in Utah providing mammography examinations. Typically this is done annually in May because the certification year runs from June 1 to May 31st. Occasionally the Division receives new applications during the year that need to be approved before the May Board meeting. A new application has been received from Matthew Fitzmaurice, Ph.D. to be certified as a MIMP. Division staff has reviewed the applicant's qualifications and he meets the requirements detailed in R313-28-140.

In accordance with Subsection 19-3-103.1(2)(c) of the Utah Code Annotated, the Board shall review the qualifications of, and issue certificates of approval to, individuals who: (i) survey mammography equipment; or (ii) oversee quality assurance practices at mammography facilities. This statutory requirement was effective May 8, 2012.

The Director of the Division of Waste Management and Radiation Control recommends the Board issue a certificate of approval for the applicant reviewed and presented to the Board.

Danielle Endres asked what the reason is for the Board to review and approve applicants outside the normal cycle. Mr. Ball stated that in this instance, a company has a contract to perform some work and that work needs to be performed before the May 2022 Board meeting. Therefore Dr. Fitzmaurice needs to be certified to assist in that endeavor.

It was moved by Steve McIff and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approve Matthew Fitzmaurice, Ph.D. to be certified by the Board as a Mammography Imaging Medical Physicist (MIMP) in accordance with UCA 19-3-103.1(2)(c).

VII. Hazardous Waste Section.

A. Approval of Proposed Stipulation and Consent Order between the Director and Clean Harbors Aragonite, LLC (Board Action Item).

Adam Wingate, Environmental Engineer in the Hazardous Waste Section of the Division of Waste Management and Radiation Control, informed the Board that he has taken over the assignments at this facility that were previously assigned to Rick Page. Mr. Page retired in December 2021. Mr. Wingate provided an overview of the proposed Stipulation and Consent Order (SCO) No. 2106050, between the Director and Clean Harbors Aragonite (CHA), LLC to resolve Notice of Violation (NOV) No. 2102003, issued to CHA on March 26, 2021.

The NOV was based on information documented during an inspection at the facility on September 9 through October 1, 2020, and several self-reported notices of noncompliance for the time period of October 1, 2019, to September 30, 2020 (fiscal year 2020). The violations noted in the NOV have been resolved.

The SCO includes a penalty of \$42,806.00. Half of this penalty will be paid in cash and the other half may be credited toward a Supplemental Environmental Project (SEP) wherein CHA transports and disposes of confiscated vaping devices from schools in Utah.

§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.

This item was presented to the Board as an information item at their December 9, 2021 meeting. A 30-day public comment period was held from December 6, 2021 through January 4, 2022. No comments were received. The Director recommends approval of the proposed SCO. Copies of the SCO, NOV, and the supporting paperwork were included in the December 9, 2021 Board packet.

It was moved by Nathan Rich and seconded by Vern Rogers and UNANIMOUSLY CARRIED to approve the proposed Stipulation and Consent Order between the Division Director and Clean Harbors Aragonite, LLC. (Shane Whitney abstained from voting.)

VIII. Director's Report.

Doug Hansen, Director of the Division of Waste Management and Radiation Control, reminded the Board that 2022 legislative session begins on Tuesday, January 18, 2022.

Director Hansen informed the Board of potential legislation that could impact the Division.

Senate Bill SB97. This bill modifies provisions regarding commercial nonhazardous solid waste treatment, storage, or disposal facilities. Specifically, this bill amends definitions to provide that a facility that receives only waste from the exploration or production of oil and gas is not considered a commercial nonhazardous solid waste treatment, storage, or disposal facility; and makes technical and conforming changes.

Director Hansen stated that this legislation would be a minor change to the current statute and one that would clarify the legislature's intent for a change in the statute that occurred two years ago where exploration and production waste was moved under the authority of the Solid and Hazardous Waste Program. Director Hansen further stated that the proposed legislation also excludes these facilities from having to get legislative and gubernatorial approval, which are currently required for all commercial waste facilities. It would also remove the requirement for a needs assessment.

The second potential legislation is in regard to the Division's waste tire program, as conversations dealing with potential increases for reimbursements for recyclers have occurred. Director Hansen stated that at this point there is no specific legislation language on this matter. Director Hansen will keep the Board informed if legislation is introduced and welcomes any information obtained by Board members regarding potential legislation impacting the Division.

IX. Other Business.

- A. Miscellaneous Information Items. None to Report.**
- B. Scheduling of next Board meeting.**

The next meeting is scheduled for February 10, 2022 at 1:30 p.m. at the Utah Department of Environmental Quality, Multi-Agency State Office Building.

X. Adjourn.

The meeting adjourned at 1:45 pm.

DRAFT

UST STATISTICAL SUMMARY
January 1, 2021 -- December 31, 2021

PROGRAM													
	January	February	March	April	May	June	July	August	September	October	November	December	(+/-) OR Total
Regulated Tanks	4,144	4,144	4,145	4,136	4,146	4,139	4,142	4,140	4,128	4,136	4,142	4,136	(8)
Tanks with Certificate of Compliance	4,051	4,051	4,053	4,058	4,063	4,067	4,065	4,056	4,050	4,052	4,060	4,049	(2)
Tanks without COC	93	93	92	78	83	72	77	84	78	84	82	87	(6)
Cumulative Facilities with Registered A Operators	1,252	1,252	1,256	1,251	1,250	1,291	1,294	1,290	1,291	1,288	1,284	1,288	98.62%
Cumulative Facilities with Registered B Operators	1,285	1,285	1,292	1,253	1,251	1,295	1,295	1,292	1,292	1,289	1,285	1,288	98.62%
New LUST Sites	5	5	10	5	2	10	8	3	8	5	7	2	70
Closed LUST Sites	4	4	16	3	4	17	6	0	9	4	6	1	74
Cumulative Closed LUST Sites	5329	5329	5350	5352	5356	5374	5378	5378	5390	5397	5398	5399	70
FINANCIAL													
	January	February	March	April	May	June	July	August	September	October	November	December	(+/-)
Tanks on PST Fund	2,666	2,666	2,666	2,663	2,664	2,664	2,662	2,653	2,649	2,642	2,646	2,635	(31)
PST Claims (Cumulative)	688	688	689	690	693	696	701	701	702	702	702	702	14
Equity Balance	-\$8,950,746	\$8,633,383	-\$8,709,493	-\$8,272,438	-\$7,719,626	-\$6,964,420	-\$6,684,027	-\$5,540,984	-\$4,033,695	-\$3,921,878	-\$2,867,569	-\$2,900,167	\$6,050,579
Cash Balance	\$19,484,534	\$19,801,897	\$19,725,787	\$20,162,842	\$20,715,654	\$21,470,860	\$21,751,253	\$22,894,296	\$23,363,833	\$23,475,650	\$24,529,959	\$24,497,361	\$5,012,827
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	2	2	2	2	2	2	2	2	2	2	0	0	-2
	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Speed Memos	48	48	75	42	81	76	82	51	78	100	77	61	819
Compliance Letters	15	15	18	13	8	7	15	16	21	8	21	16	173
Notice of Intent to Revoke	0	0	0	1	0	0	0	0	0	2	0	1	4
Orders	0	0	1	0	1	0	0	0	0	0	0	1	3

Board Information Item
Five-year review of R311, Underground Storage Tank Rules,
for submittal to the Office of Administrative Rules

The Division of Environmental Response and Remediation (DERR) would like to inform the Utah Waste Management and Radiation Control Board of our intent to file the five-year review of the Utah Underground Storage Tank rules, R311-200 to R311-212, with the Office of Administrative Rules.

Background:

According to the Utah Administrative Rulemaking Act (Title 63G, Chapter 3), each state agency must review each of its rules every five years. At the conclusion of the review, the agency must:

- File a notice of review indicating its intent to continue, amend, or repeal the rule.
- Provide an explanation of the statutory provisions under which the rule is enacted and how these provisions authorize or require the rule.
- Provide a summary of written comments received since the last five-year review.
- Provide a reasoned justification for continuation of the rule.

If the agency does not file the five-year review form on or before the anniversary of the last review, the rule automatically expires. The deadline to file the five-year review forms is March 27, 2022. The review does not make any changes to the rules, so no public comment period is required.

The rules that have been reviewed are:

- R311-200, Underground Storage Tanks: Definitions.
- R311-201, Underground Storage Tanks: Certification Programs and UST Operator Training.
- R311-202, Federal Underground Storage Tank Regulations.
- 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.
- R311-210, Administrative Procedures.
- R311-211, Corrective Action Cleanup Standards Policy - UST and CERCLA Sites.
- R311-212, Administration of the Petroleum Storage Tank Loan Program.

Attached is a copy of the form to be submitted for each rule. Each form contains an explanation of the statutory provisions authorizing or requiring the rule, a summary of written comments received since the last five-year review, and a justification for continuation of the rule. The text of the current rules can be found at <https://adminrules.utah.gov/public/search/R311/Current%20Rules>. The current text for each rule will be submitted to Administrative Rules as part of the five-year review submittal. The Division recommends that each rule be continued.

This matter does not require Board action. The Division believes it to be appropriate to inform the Board of all administrative actions required on rules for which the Board has responsibility. The completed five-year review forms will be submitted to the Office of Administrative Rules on or before March 27, 2022.

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-200	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

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

General Information

2. Rule catchline:
R311-200. Underground Storage Tanks: Definitions
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule is necessary for continued operation of the Underground Storage Tank program. It contains important definitions that clarify terms used elsewhere in the UST rules.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.			

R311. Environmental Quality, Environmental Response and Remediation.

R311-200. Underground Storage Tanks: Definitions.

R311-200-1. Definitions.

- (1) Terms used in this rule are defined in Section 19-6-402.
- (2) In addition, for purposes of this rule:
 - (a) "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 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 UST system.
 - (d) "Certificate" means a document that evidences certification.
 - (e) "Certification" means approval by the 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(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.
 - (j) "Community water 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.
 - (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.
 - (l) "Consultant" is a person who is a certified UST consultant according to Subsection 19-6-402(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.
 - (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.
 - (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 following the criteria in Rule R311-211.
 - (p) "Department" means the Utah Department of Environmental Quality.
 - (q) "Eligible exempt UST" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in Subsection 19-6-415(1).
 - (r) "Environmental media sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.
 - (s) "EPA" means the United States Environmental Protection Agency.
 - (t) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the director.
 - (u) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.
 - (v) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of an UST.
 - (w) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.
 - (x) "Injury or damages from a release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in Subsection R311-211-6(1).
 - (y) "In use" means that an operational, inactive or abandoned UST contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to the safety of human health or the environment, as determined by the director.
 - (z) "Lapse" in reference to the certificate of compliance and coverage under the Environmental Assurance Program, means to terminate automatically.
- (aa) "Native soil" means any soil that is not backfill material, is naturally occurring, and is most representative of the localized subsurface lithology and geology.
- (bb) "No Further Action determination" means that the director has evaluated information provided by responsible parties or others about the site and determined that any detectable petroleum contamination from a particular release does not present a

threat to public health or the environment based upon Board established criteria in Title R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(cc) "Occurrence" in reference to 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 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 Subsection 19-6-402(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 Tank Trust Fund" means the Fund created by Section 19-6-409.

(jj) "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such 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 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 UST registration fee.

(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", 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 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 their designee, when gathering information for reports required for Utah 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 must in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former USTs; extent of any excavations; location and volume of any stockpiled soil; locations, depths, and analytical results of all environmental media samples collected; locations and total depths of borings or permanent wells, or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

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

(i) fire and explosion hazards have been abated;

(ii) free flow of the product out of the tank has been stopped.

(iii) free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the director, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6);

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

(v) a soil or groundwater management plan or both have been submitted for approval by the director. (tt)

"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(7).

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

(yy) "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 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 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 underground storage tank testing. (hhh)(i) "UST testing" means:

- (A) a testing method which can detect leaks in an underground storage tank system;
- (B) testing for compliance with corrosion protection requirements;
- (C) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components; or
- (D) any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.

(ii) testing methods must meet applicable performance standards:

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

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

piping;

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

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

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

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

KEY: petroleum, underground storage tanks

Date of Last Change: September 13, 2021 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 November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-201	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

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

General Information

2. Rule catchline:	R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	<p>Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for the administration of the petroleum storage tank program and certification of UST installers, inspectors, testers, removers, and petroleum storage tank consultants. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Subsection 19-6- 402(7)(a) of the UST Act refers to education and experience standards established by board rule for certified petroleum storage tank consultants. Section 19-1-301 of the Environmental Quality Code requires that the Department of Environmental Quality and its boards comply with procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act (APA), and specifies that procedures for an adjudicative proceeding conducted by an administrative law judge are governed by the APA and rules adopted by a board as allowed by Subsection 63G-4-102(6). Section 63G-4-102 of the APA states that the APA governs actions by state agencies that determine or limit legal rights and privileges of persons and governs judicial review of those actions. It allows agencies to enact and follow rules affecting or governing adjudicative proceedings if the rules are enacted according to procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of the APA. Sections 63G-4-201 through 63G-4-205 of the APA allow agencies to enact rules governing certain aspects of adjudicative proceedings, such as commencement of proceedings, designation of categories of proceedings as formal or informal, and procedures for conducting informal and formal proceedings. Section 63G-4-503 of the APA requires an agency to issue rules regarding declaratory orders.</p>	
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	No comments on this rule have been received since the last five-year review.	
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:	<p>The rule is necessary for continued operation of the Petroleum Storage Tank program. As directed by Subsection 19-6-403(1) (a) of the Utah UST Act, the rule provides certification requirements for UST installers, UST removers, UST testers, UST inspectors, and petroleum storage tank consultants. It also provides for training and registration of UST operators, as required by the Energy Policy Act and Subsection 19-6-403(1)(b) of the UST Act.</p>	

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
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Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.

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. Requirement for Certification.

- (1) a certified UST consultant is required as specified in Subsection 19-6-402(7)(b).
- (a) no person shall provide or contract to provide the following services without having certification to conduct these activities:
 - (i) provide information, opinions, or advice relating to UST release management;
 - (ii) abatement;
 - (iii) investigation;
 - (iv) corrective action; or
 - (v) evaluation for a fee, or in connection with the services for which a fee is charged.
- (A) except as outlined in Subsection R311-204-5(2); and
- (B) except for releases from a hazardous substance UST system, as defined in 40 CFR 280.10.
- (b) a certified UST consultant must:
 - (i) make pertinent project management decisions;
 - (ii) ensure all aspects of petroleum storage tank-related work are performed in an appropriate manner; and
 - (iii) sign all documentation to be submitted to the director for work performed.
- (c) any UST release abatement, investigation, or corrective action work performed by a person who is not certified or who is not working under the direct supervision of a certified UST consultant, and is performed for compliance with Utah UST rules, may be rejected by the director.
- (2) UST inspector. No person shall conduct an UST inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct such activities.
 - (a) the director may issue a limited certification restricting the type of UST 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 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.
 - (b) an individual certified under Rule R311-201 as a UST installer may:
 - (i) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;
 - (ii) perform an overfill device inspection to meet the requirements of 40 CFR 280.35(a)(2);
 - (iii) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i), 280.40(a)(3)(ii), 280.40(a)(3)(iv), and 280.40(a)(3)(v); and
 - (iv) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.
 - (c) a UST owner or operator may:
 - (i) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used; and
 - (ii) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.
 - (d) certification by the director under this rule applies only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by equivalent training as determined by the director, for the following types of testing:
 - (i) tank, line, and leak detector testing;
 - (ii) interstitial tests of tanks and piping; and
 - (iii) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.
 - (e) the director may issue a limited certification restricting the type of UST testing the applicant can perform.
 - (4) Certified sampler. No person shall conduct environmental media sampling for determining levels of contamination which may have occurred from regulated USTs without having certification to conduct these activities.
 - (a) no owner or operator shall allow any environmental media sampling for determining levels of contamination which may have occurred from regulated USTs to be conducted on a tank under their ownership or operation unless the person conducting the environmental media sampling is certified according to Rule R311-201.
 - (5) UST installer. No person shall install a UST without having certification or the on-site supervision of an individual having certification to conduct these activities.

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

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

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

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

R311-201-3. Eligibility for Certification.

(1) Certified UST consultant.

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

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

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

(A) state and federal statutes;

(B) rules and regulations;

(C) environmental media sampling; and

(D) department policies.

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

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

or

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

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

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

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

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

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

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

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

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

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

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

(2) UST inspector.

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

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

(A) corrosion;

(B) geology;

(C) hydrology;

(D) tank handling;

(E) tank testing;

(F) product piping testing;

(G) disposal;

(H) safety;

(I) sampling methodology;

(J) state site inspection protocol;

(K) state and federal statutes; and

(L) Utah UST rules and regulations.

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

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

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

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

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

(3) UST tester.

(a) financial assurance. An applicant or applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST 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 applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the certification application.

(b) training. For initial certification, an applicant must complete UST testers training within the six month period prior to application, in a program approved by the director, to provide training to include applicable and related areas of state and federal statutes, rules, and regulations.

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

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

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

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

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

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

(c) performance standards of equipment. An applicant must submit documentation that demonstrates the UST testing equipment used by the applicant meets the performance standards specified in Subsection R311-200-1(2)(hhh)(ii).

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

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

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

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

(4) Certified sampler.

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

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

(A) chain of custody;

(B) decontamination;

(C) EPA testing methods;

(D) environmental media sampling protocol;

(E) preservation of samples during transportation;

(F) coordination with Utah certified laboratories; and

(G) state and federal statutes, rules, and regulations.

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

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

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

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

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

(5) UST installer.

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

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

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

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

(A) tank installation;

(B) pre-installation tank testing;

(C) product piping testing;

(D) excavation;

(E) anchoring;

(F) backfilling;

(G) secondary containment;

(H) leak detection methods;

(I) piping;

(J) electrical; and

(K) state and federal statutes, rules, and regulations.

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

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

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

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

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

(6) UST remover.

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

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

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

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

(A) tank removal;

(B) tank removal safety practices; and

(C) state and federal statutes, rules, and regulations.

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

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

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

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

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

R311-201-4. Application for Certification.

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

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

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

(2) Applications submitted under Subsection R311-201-4(a) 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 R311-201-3 and meets the applicable performance standards specified in Section R311-201-6;

(b) paying any applicable fees; and

(c) passing a certification renewal examination.

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

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

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

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

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

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

R311-201-6. Standards of Performance.

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

(a) display the certificate upon request;

(b) comply with all local, state, and federal laws, rules, and regulations regarding the UST 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, the local health district, and the local public safety office within 24 hours.

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

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

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

(2) The director may audit or commission 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) UST installer. An individual who performs 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:

(A) pre-installation tank testing;

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

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

(D) vent and product piping assembly;

(E) fill tube attachment;

(F) installation of tank manholes;

(H) secondary containment construction; and

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

(e) UST remover. An individual who performs UST removal in the State of Utah must:

(i) 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 must be supervised by a certified person; and

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

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

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

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

R311-201-8. Inactivation of Certification.

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

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

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

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

R311-201-9. Revocation of Certification.

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

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

R311-201-10. Reciprocity.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) have a general knowledge of UST systems;

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

(iii) ensure that yearly UST fees are paid;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a UST tester; or

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

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

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

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

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

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

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

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

(10) Operator training and registration.

(a) training and testing.

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

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

(A) notification;

(B) temporary and permanent closure;

(C) installation permitting;

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

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

(F) spill prevention;

(G) overfill prevention;

(H) UST release detection;

(I) corrosion protection;

(J) record-keeping requirements;

(K) emergency response;

(L) product compatibility;

- (M) Utah UST rules and regulations;
- (N) UST financial responsibility; and
- (O) delivery prohibition.
- (iii) applicants for Class A and B operator registration must successfully pass a registration examination authorized by the director.
- (A) the director shall determine the content of the examination.
- (iv) an individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(10)(a)(i) and R311-201-12(10)(a)(iii) by completing the following within the six-month period prior to application:
 - (A) successfully passing a nationally recognized UST operator examination approved by the director; and
 - (B) successfully passing a Utah UST rules and regulations examination authorized by the director.
- (v) the director shall determine the content of the examination.
- (vi) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.
 - (b) registration application.
 - (i) applicants for Class A and B operator registration must:
 - (A) submit a registration application to the director;
 - (B) document proper training; and
 - (C) pay any applicable fees.
 - (ii) Class C operators shall be designated by a Class B operator.
 - (iii) the Class B operator must maintain a list identifying the Class C operators for each UST facility. The list must identify:
 - (A) each Class C operator;
 - (B) the date of training; and
 - (C) the trainer.
 - (iv) identification on the list serves as the operator registration for Class C operators.
 - (v) a registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.
 - (vi) Class A and B registration shall be effective for a period of three years, and shall not lapse or become inactive if the registered operator leaves the employment of the company under which the registration was obtained.
 - (c) renewal of registration.
 - (i) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:
 - (A) submitting a completed application form;
 - (B) paying any applicable fees; and
 - (C) documenting successful completion of any re-training required by Subsection R311-201-12(10)(d).
 - (ii) if the director determines that the operator meets all the requirements for registration, the director shall renew the applicant's registration for a period equal to the initial registration.
 - (iii) any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application must successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(10)(a) before receiving the renewal registration.
 - (d) re-training.
 - (i) a Class A operator is subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:
 - (A) lapsing of certificate of compliance;
 - (B) failure to provide acceptable financial responsibility; or
 - (C) failure to ensure that Class B and C operators are trained and registered.
 - (ii) a Class B operator is subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:
 - (A) failure to document compliance, as determined by the Technical Compliance Rate;
 - (I) Technical Compliance Rate is determined using the EPA "UST and LUST Performance Definitions as of October 2018" and incorporated herein by reference.
 - (B) failure to perform UST operator inspections required by Section R311-203-7; or
 - (C) failure to ensure that Class C operators are trained and registered, and are onsite during operating hours.
 - (iii) to be re-trained, Class A and Class B operators must successfully complete the appropriate Class A or B operator training course and examination, or must complete an equivalent re-training course and examination approved by the director.
 - (iv) Class A and B operators must be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the director within 30 days of the re-training.
 - (A) if the documentation is not received by the director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse.
 - (B) to re-register, the operator shall meet the requirements of Subsection R311-201-12(10)(a) and R311-201-12(10)(b).
 - (v) if a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(10)(d)(i) or R311-201-12(10)(d)(ii), re-training is not required if the Class A or B operator successfully completes and documents re-training under Subsection R311-201-12(10)(d) for a prior determination of non-compliance that occurred during the previous nine months.
- (11) Reciprocity.
 - (a) if the director determines that another state's operator training program is equivalent to the operator training program provided in this rule, he 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(10)(a)(iv)(B); and
 - (iii) submits payment of any applicable registration fees.
 - (b) the Class A or Class B registration is valid until the Utah registration expiration described in Subsection R311-201-12(10)(b)(vi).

Date of Last Change: September 13, 2021

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 November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-202	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
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Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R311-202. Federal Underground Storage Tank Regulations
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program and the adoption of applicable Federal UST regulations. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule is necessary for the continued operation of the Petroleum Storage Tank program. It provides for the incorporation by reference of the federal UST regulations (40 CFR Part 280) and is specifically mandated by Subsection 19-6-403(1)(b) of the Utah UST Act.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.			

R311. Environmental Quality, Environmental Response and Remediation.

R311-202. Federal Underground Storage Tank Regulations.

R311-202-1. Incorporation by Reference.

This rule incorporates by reference 40 CFR Part 280, the federal underground storage tank regulations, in effect as of October 13, 2015, except that:

- (1) 40 CFR 280 Subpart J is not incorporated by reference;
- (2) the definitions of Class A operator, Class B operator, Class C operator, and Training program in 40 CFR 280.12 are not incorporated by reference;
- (3) The date October 13, 2015 in 280.10(a)(1)(ii), 280.10(a)(1)(iii), 280.20(c)(3), 280.35(b)(1), 280.35(b)(2), 280.42(a) note, 280.42(e), 280.45(a), 280.251(a)(1), 280.251(a)(2), 280.251(b), 280.252(b), 280.252(e), 40 CFR Part 280 appendix 1, and 40 CFR Part 280 appendix 2 is, in each instance, changed to January 1, 2017; and
- (4) The date April 11, 2016 in 280.20, 280.20(f), 280.41(a)(1), 280.41(a)(2), 280.41(b)(1), and 280.41(b)(2) is, in each instance, changed to January 1, 2017.

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

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-203	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:	R311-203. Underground Storage Tanks: Technical Standards	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for registration of tanks and administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-408 of the UST Act provides for the assessment of an annual petroleum storage tank registration fee on petroleum storage tanks. Subsection 19-6-411(2)(b) of the UST Act requires the board to make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full UST system is installed.	
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	No comments on this rule have been received since the last five-year review.	
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:	The rule is necessary for continued operation of the Petroleum Storage Tank program. It clarifies when UST owners/operators and installers must notify on new installations, upgrades, and changes of ownership. It provides for the administration of the registration fee mandated by Section 19-6-408 of the Utah UST Act, the installer permit fees mandated by Section 19-6-411, and the installer notification requirements mandated by Section 19-6-407. It provides clarification of the tank testing requirements in Section 19-6-413 of the UST Act and subparts C (General Operating Requirements) and D (Release Detection) of 40 CFR 280, the federal UST regulations. It provides clarification of the secondary containment and Operator Inspection requirements in subparts B (UST Systems: Design, Construction, Installation and Notification) and J (Operator Training) of 40 CFR 280, the federal UST regulations.	

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the

agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.			

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 UST must notify the 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 must be submitted on the current approved notification form.
- (3) Notifications submitted to meet the requirements of Subsection R311-203-2(a) shall be submitted within 30 days of the completion of the work or the change of ownership.
- (4) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:
 - (a) complete the appropriate section of the form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or
 - (b) provide separate notification to the director within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

- (1) Certified UST installers must notify the director at least 10 days, or another time period approved by the director, before commencing any of the following activities:
 - (a) the installation of a full UST system or tank only;
 - (b) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
 - (c) the internal lining of a previously-existing tank;
 - (d) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
 - (e) the installation of a bladder in a tank;
 - (f) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
 - (g) the installation of a spill prevention or overfill prevention device;
 - (h) the installation of a leak detection monitoring system; or
 - (i) the installation of a containment sump or under-dispenser containment.
- (2) The UST installation company must submit to the director an UST installation permit fee of \$200 when any of the activities listed in Subsection R311-203-3(1)(a) through R311-203-3(1)(f) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.
- (3) The fees assessed under Subsection 19-6-411(2)(a)(i) will be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date.
 - (a) installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3(3) is charged shall count toward the total installations for the 12-month period.
- (4) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(4), an installation is considered complete when:
 - (a) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or
 - (b) in the case of installation of the components listed in Subsections R311-203-3(1)(d) through R311-203-3(1)(f), the new installation is functional and the UST holds a regulated substance and is operational.
- (5) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the director of the change.
 - (a) when additions are made, the UST installation permit fee shall be increased based on the additional number of tanks to be installed in accordance with Subsection 19-6-411(2)(a)(i) and the Department of Environmental Quality Fee Schedule, as approved annually by the Legislature.
- (6) The number of UST installation companies performing work on a particular installation will not be a factor in determining the UST installation permit fee for that installation.
 - (a) each installation company must be identified on the UST installation permit.
- (7) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator must submit to the director an as-built drawing that meets the requirements of Subsection R311-200-1(2)(b).

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

- (1) Registration fees will be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and will be billed per facility.
- (2) Registration fees are due on July 1 of the fiscal year for which the assessment is made, or, for USTs brought into use after the beginning of the fiscal year, UST registration fees are due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

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

(4) The director shall issue a certificate of registration to owners or operators for individual USTs 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 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 may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility.

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

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

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

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

(a) if the UST is properly permanently closed within 90 days of the notification of the existence of the UST, the 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.

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

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

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

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

(c) another form approved by the director.

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

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

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

(c) another form approved by the director.

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

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

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

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

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

(c) test results in volts or millivolts;

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

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

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

(b) measured leak rate;

(c) test duration;

(d) product level for tank tests;

(e) pressure used for pressure tests;

(f) type of test; and

(g) test equipment used.

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

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

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

(c) another form approved by the director.

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

(a) the form "Appendix C-7 Automatic Tank Gauge Operation Inspection", found in PEI RP1200, and if the UST 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 meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an UST system after October 1, 2008 and before January 1, 2017 must have secondary containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

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

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

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

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

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

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

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

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

(ii) meet the requirements of Subsections R311-203-6(2)(b).

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

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

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

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

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

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

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

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

(2) Under-dispenser containment.

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

(b) the under-dispenser containment must:

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

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

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

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

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

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

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

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

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

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

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

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

R311-203-7. Operator Inspections.

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

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

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

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

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

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

R311-203-8. Unattended Facilities.

(1) A facility that:

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

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

and

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

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

Date of Last Change: September 13, 2021

Notice of Continuation: March 27, 2017

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

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-204	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R311-204. Underground Storage Tanks: Closure and Remediation
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-402 of the UST Act provides definitions for terms pertinent to the underground storage tank program, including "Certified petroleum storage tank consultant", and refers to consultant education and experience standards established by the board.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule is necessary for continued operation of the Petroleum Storage Tank program. It specifies the requirements for UST closure plans, specifies labeling requirements and acceptable disposal methods for USTs that have been removed, and specifies when remedial activities may take place without the supervision of a certified petroleum storage tank consultant.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or			

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 USTs or any portion thereof which are to be permanently closed or undergo change-in-service must submit a permanent closure plan to the director.

(a) the permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with 40 CFR 280 Subpart G.

(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:

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

(4) No UST 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, except as outlined in Subsection R311-204-2(b).

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

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

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

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

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

(8) The director must be notified at least 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;
- (b) the substance contained; and
- (c) the date removed: "month/day/year".

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

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

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

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

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

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

- (i) scale;
- (ii) north arrow;
- (iii) streets;
- (iv) property boundaries;
- (v) building structures;
- (vi) utilities;
- (vii) UST system location;

- (viii) location of any contamination observed or suspected during sampling;
 - (ix) location and volume of any stockpiled soil;
 - (x) the extent of the excavation zone; and
 - (xi) any other relevant features.
- (c) all sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.
- (3) Owners and operators of USTs that are temporarily closed for a period greater than three months must submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.
- (4) All 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 UST consultant, except as outlined in Subsections 19-6-402(6)(b), R-311-201-2(a), and R311-204-5(2).

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

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

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

KEY: hazardous substances, petroleum, underground storage tanks

Date of Last Change: September 13, 2021

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 November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-205	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
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Mailing address:	P.O. Box 144840	
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Contact person(s):		
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David Wilson	385-251-0893	djwilson@utah.gov
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Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:	R311-205. Underground Storage Tanks: Site Assessment Protocol	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-413 of the UST Act refers to requirements set by rule for tightness tests performed as part of the application to receive a petroleum storage tank certificate of compliance.	
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	The division received comments regarding this rule during the informal comment period related to rulemaking. The comments dealt with concerns regarding sampling protocols and procedures in the "Utah Petroleum Storage Tank Environmental Media Sampling Handbook" which were incorporated by reference in this rule. The division determined that the comment received would not change the essence of the proposed rules, but will be considered in future implementation of the program.	
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:	The rule is necessary for continued operation of the Petroleum Storage Tank program. It specifies the requirements for site assessments for UST closures and specifies tank testing and site check requirements for tanks that will be covered by the Petroleum Storage Tank Trust Fund after a period of non-participation.	

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022

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

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

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

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

(i) these samples must be collected at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled.

(ii) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

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

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

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

(4) Site check requirements for re-applying to participate in the Environmental Assurance Program.

(a) owners or operators wishing to re-apply for participation in the Environmental Assurance Program following a period of lapse or non-participation must perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a).

(i) the tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(b) the owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program.

(i) the director shall review and approve the site check plan prior to its implementation.

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

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

(5) Laboratory analyses of environmental media samples.

(a) environmental media samples which have been collected to determine levels of contamination from USTs must be analyzed by a certified environmental laboratory.

(b) unless otherwise approved by the director, the required analytes and corresponding analytical methods shall be:

(i) for gasoline contamination:

(A) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C₆ - C₁₀) by either EPA 8015 or EPA 8260; and

(B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), and methyl tertiary butyl ether (MTBE) by either EPA 8021 or EPA 8260.

(ii) for diesel fuel contamination:

(A) total petroleum hydrocarbons (extractable TPH as diesel range organics C₁₀ - C₂₈) by EPA 8015; and

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

(iii) for used oil contamination:

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

(B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by EPA 8021 or EPA 8260.

(iv) for new oil contamination:

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

(v) contamination from USTs which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the director.

(vi) for contamination of an unknown petroleum product type:

(A) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C₆ - C₁₀) by either EPA 8015 or EPA 8260;

(B) total petroleum hydrocarbons (extractable TPH as diesel range organics C₁₀ - C₂₈) by EPA 8015;

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

(D) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.

(vii) potential vapor intrusion from petroleum product types shall be analyzed for appropriate constituents as determined by the director.

(c) 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 media samples must be collected and transported under chain of custody according to EPA methods as approved by the director.

(e) reporting limits used by laboratories analyzing environmental media samples taken under this rule shall be below Initial Screening Levels for the contaminated media under study.

(i) environmental media samples shall be analyzed with the least possible dilution to ensure reporting limits are below Initial Screening Levels to the extent possible.

(ii) if more than one determinative analysis is performed on any given environmental media sample, the final dilution factor used and the reporting limit must be reported by the laboratory.

(A) as an alternative to diluting environmental media samples, the laboratory shall use appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference.

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

KEY: petroleum, underground storage tanks

Date of Last Change: September 13, 2021

Notice of Continuation: March 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-413

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-206	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room no.:		
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Mailing address:	P.O. Box 144840	
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Contact person(s):		
Name:	Phone:	Email:
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
<p>Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program, including format and required information regarding records to be kept by tank owner/operators who are participating in the Petroleum Storage Tank Trust Fund, and voluntary participation in the Fund of above-ground petroleum storage tanks and unregulated underground tanks. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs. Subsection 19-6-410.5(5)(d) required that the Division of Environmental Response and Remediation, by January 1, 2015, create a risk profile model and rebate schedule for rebates of a percentage of the environmental assurance fee collected from UST owner/operators that participate in the environmental assurance program. Subsection 19-6-411(7)(b) of the UST Act specifies that the board shall make rules providing for the identification of tanks that do not qualify for a certificate of compliance. Subsection 19-6-428(3)(b) of the UST Act provides that the Director of the Division of Environmental Response and Remediation may determine, with reasonable cause, that soil/groundwater sampling is not required to establish that no petroleum has been released when a petroleum storage tank owner/operator desires to place petroleum storage tank facility under Fund coverage after a period of non-participation.</p>
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
<p>The rule is necessary for continued operation of the Underground Storage Tank program. It specifies requirements for petroleum storage tank owners and operators participating in the Petroleum Storage Tank Trust Fund, and for those who show financial responsibility by other mechanisms. It provides rules for identification of compliant tanks, as mandated by Subsection 19-6-411(7) of the UST Act. It specifies the conditions under which the director may determine that there is reasonable cause under Subsection 19-6-428(3)(b) of the UST Act to establish that no sampling is required for sites that will participate in the Fund after a period of non-participation. The rule includes Section R311-206-11, requirements for the environmental assurance fee rebate program mandated by Subsection 19-6-410.5(5)(d) of the UST Act. The maximum rebate percentage is set by</p>

statute and cannot be changed in rule. Risk factors were developed in the context of the various components of a facility and an overall risk level assigned to a UST facility based on facility's characteristics.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
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Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.

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 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 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 must be covered by the same financial assurance mechanism, and must be considered to be in one area, unless the director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(1) The director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(a) the owner or operator has a certificate of registration;

(b) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

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

(d) the owner or operator has submitted a letter to the director stating that based on customary business inventory practices standards there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and has declared 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(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 as a specific number of gallons, based on the throughput for the previous calendar year.

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the director, any petroleum storage tank fee for that tank for the current fiscal year is due when the tank is brought into use, as a requirement for receiving a certificate of compliance.

(3) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(4) Auditing of UST facility throughput records.

(a) owners and operators must retain for seven years the monthly tank throughput records of the facility.

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

(c) the director may audit or commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) records must be made available at the Department for inspection within 30 calendar days after receiving notice from the director.

(ii) audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(iii) auditing tank throughput may be accomplished by any method approved by the director.

(iv) all costs of an independent audit shall be paid by the owner or operator.

(5) Owners or operators eligible for participation in the Environmental Assurance Program must demonstrate financial assurance for the difference between coverage provided by the Environmental Assurance Program and coverage amounts required by 40 CFR 280 Subpart H.

(a) if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the director.

(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.

(A) the owner or operator will bear the expense for the audit.

(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).

(b) an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

(c) the processing fee requirement referenced in Subsection R311-206-5(2) is not applicable because the administrative cost is covered by the Environmental Assurance Program fee.

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(1) Owners and operators who elect to utilize an alternate form of financial assurance must use one or a combination of mechanisms specified in 40 CFR 280.94.

(a) owners and operators must submit to the director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(b) formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(c) if the financial assurance documentation submitted to the director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) processing fees for subsequent reviews of financial assurance documents are due on July 1 of the fiscal year for which the review is required.

(b) pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.

(ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).

(c) if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the director, and an additional processing fee shall be paid in circumstances as determined by the director.

(3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:

(a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.

(b) owners and Operators using insurance and risk retention group coverage for financial assurance must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) if the insurance policy or risk retention group coverage is 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 280.97(b)(2)2.d. to the director as well as the insured.

(ii) the insurer must have a rating of A- or greater by A.M. Best Co.

(c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.

(d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.

(e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(g) guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.

(4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) information requested must be reported to the director within 30 calendar days after receiving the request.

(b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.

(d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.

(i) audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(ii) auditing of financial assurance methods may be accomplished by any method approved by the director.

(5) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the director is the sole responsibility of the owner or operator.

(6) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the director.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and Aboveground Storage Tanks to the Environmental Assurance Program.

(1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(a) meeting the requirements of Section 19-6-428 and Subsections 19-6-415(1) and R311-206-3(1);

- (b) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and
 - (c) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.
- (2) Owners or operators of aboveground storage tanks may voluntarily participate in the Environmental Assurance Program by:
- (a) meeting the requirements of Section 19-6-428 and Subsections 19-6-415(2) and R311-206-3(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 aboveground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(1) The director shall revoke a certificate of compliance or registration if he 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(1) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.

(3) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsection 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 lapse under Subsection 19-6-411(3)(c)(ii) must:

(a) meet the requirements of Subsection 19-6-428(3); and

(b) pay all fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund will terminate as specified in Section R311-207-2.

(a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with 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 shall authorize the placement of a delivery prohibition tag identifying a tank:

(a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414;

(b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5);

(c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(1)(d); or

(d) that is a new installation, and has not been issued a certificate of compliance.

(2) In accordance with Subsection 19-6-403(1)(b)(i), the director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank does not have:

(a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);

(b) overflow prevention equipment required under 40 CFR 280.20(c) or 280.21(d);

(c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or

(d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) 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(5).

(5) The director may issue written approval for a delivery of petroleum to:

(a) provide ballast for a new tank during installation, or

(b) allow for the tank tightness test required under Section 19-6-413.

(6) The delivery prohibition tag must remain in place until the director issues:

(a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):

(i) a new certificate of compliance for the tank; and

(ii) written authorization to remove the delivery prohibition tag; or

(b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):

(i) written authorization to remove the delivery prohibition tag.

(7) If a delivery prohibition tag is removed without the authorization specified in Subsections R311-206-8(6)(a)(ii) or R311-206-8(6)(b)(i), the UST owner or operator is be subject to:

(a) a re-inspection and any applicable fees; and

(b) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(1) Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the 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 and Rules R311-204 and R311-205; or

(b) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5; and

(ii) notifying the director in writing at least 30 days before the date of cessation of participation in the Environmental Assurance Program, and specifying the date of cessation.

(A) the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other petroleum storage tanks owned or operated by the owner or operator.

(B) the date of cessation of participation in the Environmental Assurance Program may occur after the date designated in Subsection R311-206-9(1)(b)(ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) pro-rata refunds will not be given.

(3) For tanks being removed voluntarily from the Environmental Assurance Program, the date of cessation of participation in the Environmental Assurance Program shall be the date on which coverage under the Environmental Assurance Program ends.

(a) subsequent claims for payments from the Fund must be made in accordance with Sections 19-6-424 and R311-207-2.

(4) For any facility that participates in the Environmental Assurance Program 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 must, before any subsequent participation in the Environmental Assurance Program, meet the following requirements:

(a) notify the director of the intent to participate in the Environmental Assurance Program;

(b) comply with the requirements of Subsection 19-6-428(3); and

(c) meet the requirements of Subsection R311-206-3(1) to qualify for a new certificate of compliance.

(2) In accordance with Subsection 19-6-428(3)(b), the director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each petroleum storage tank to participate in the Environmental Assurance Program, meets the following requirements at the time the owner or operator applies for participation:

(a) the last two compliance inspections verify compliance with EPA UST Technical Compliance Rate, and verify that no release has occurred.

(b) documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable; and

(iv) internal lining inspections, if applicable.

(c) the period of non-participation in the Environmental Assurance Program is less than six months, or the petroleum storage tank is less than ten years old.

R311-206-11. Environmental Assurance Fee Rebate.

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the Environmental Assurance Program, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation", which is hereby incorporated by reference.

(a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the Environmental Assurance Program shall be:

(a) calculated on a facility basis;

(b) valid for the calendar year;

(c) based on the facility characteristics as of December 15 of the prior calendar year; and

(d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.

(3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(a) meet the requirements for secondary containment in 40 CFR 280.20; and

(b) meet one of the following:

(i) use an interstitial sensor and documentation of monthly interstitial monitoring; or

(ii) documentation of monthly visual checks of a brine-filled interstitial space.

(4) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and

(b) meet one of the following:

(i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls. (6) Each facility that participates in the Environmental Assurance Program may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in

"Environmental Assurance Fee Rebate Table", dated June 2, 2014, which is hereby incorporated by reference.

(7) A facility that begins participation in the Environmental Assurance Program 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: petroleum, underground storage tanks

Date of Last Change: September 13, 2021

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 November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-207	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state and zip:	Salt Lake City, Utah 84114-4840	
Contact person(s):		
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Please address questions regarding information on this notice to the agency.

General Information

2. Rule catchline:
R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-409 of the UST Act creates the Petroleum Storage Tank (PST) Trust Fund and provides for payment of costs covered by the fund, including certain costs of certified petroleum storage tank consultants hired by third parties who have been affected by a release from a petroleum storage tank. Section 19-6-419 of the UST Act specifies costs to be paid by the Petroleum Storage Tank Trust Fund for investigating and cleaning up releases at covered petroleum storage tank sites, and specifies that the board shall make rules governing the apportionment of costs among third-party claimants for releases that are covered by the fund.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The division received comments regarding this rule during the informal comment period related to rulemaking. The comments dealt with the personnel classifications and labor rates found in the Cost Guidelines for Underground Storage Tank Sites which were incorporated by reference in this rule. The personnel classifications and labor rates were updated based on comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is an integral part of the Petroleum Storage Tank Trust Fund, and provides the necessary protocol allowing access to fund monies for investigating and cleaning up petroleum releases covered by the fund. It helps maintain the financial viability of the fund to provide a means for petroleum storage tank owner/operators to meet the federal and state-mandated financial responsibility requirements, and provide reimbursement for expenses associated with covered petroleum releases. It provides necessary requirements to implement Subsection 19-6-409(2)(e) of the UST Act, and provides for payment of certain costs of certified petroleum storage tank consultants hired by third parties.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .		
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy): 2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.		

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 must:
- (a) have previously satisfied the requirements of Subsection R311-206-3(1);
 - (b) have a valid certificate of compliance at the time of product release by the covered UST; and
 - (c) meet the requirements of Section 19-6-424.
- (2) Except as provided in Subsection R311-207-2(3), a responsible party eligible to receive payments in accordance with Section 19-6-419 must submit to the director a written eligibility application to make a claim against the Fund:
- (a) during a period for which that tank was covered by the Fund;
 - (b) within one year after that Fund-covered tank is closed;
 - (c) within six months after the end of the period during which the tank was covered by the Fund; or
 - (d) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.
- (3) For eligible releases that are discovered and reported to the director after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the 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.
- (5) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in Subsection R311-207-2(2), shall constitute a claim against the Fund in accordance with Section 19-6-424.
- (6) The responsible party's share of eligible costs remains the same, regardless of the number of responsible parties who are associated with a release and covered by the Fund.
- (a) only one responsible party can claim against the fund per release in accordance with Section 19-6-419.
 - (7) When a facility has an open release and a subsequent Fund eligible release occurs at that facility, the Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable under Section 19-6-419.
 - (a) additional Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release.
 - (b) the director shall determine the allowable coverage for a subsequent release.
 - (8) 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 has made a determination that the clean up standards established for the site pursuant to Section R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status.

R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

- (1) Upon making a claim for coverage under the Petroleum Storage Tank Trust Fund, and after receiving notice from the director of eligibility to claim against the Fund, the responsible party shall meet compliance time tables issued by the director
- (2) For allowable costs to be covered by the Fund, the director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6).
- (a) work plans must include a budget for the work.
 - (i) budgets must be in compliance with 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 consultant must have a Statement of Qualification approved by the director.
 - (a) the initial Statement of Qualification submittal shall include information about the qualifications of all certified UST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans.
 - (b) the Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:
 - (i) the consultant and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;
 - (ii) the consultant and other key personnel have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law; and
 - (iii) the consultant carries the following insurance:
 - (A) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

- (B) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and
- (C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.
- (c) the Statement of Qualification must be updated annually in January, and shall be approved by the director for a period of one year.
- (i) the update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(3)(a) and R311-207-3(3)(b).
- (4) Work plans must include the Petroleum Storage Tank Trust Fund Work Plan Approval Application and Agreement form documenting the claimant's contract with any proposed consultant or other person performing remedial action.
 - (a) information provided on that form shall demonstrate that the claimant's contract has met the following requirements:
 - (i) the contract shall be with the consultant and specify the certified UST consultant and other key personnel for which qualifications are submitted under Subsection R311-207-3(3);
 - (ii) the contract shall require a 100% payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;
 - (iii) the consultant shall have no cause of action against the state for payment;
 - (iv) the contract will specify a subcontracting method consistent with the requirements of R311-207;
 - (v) the contract shall require, and include documentation that the consultant carries, the insurance specified in Subsection R311-207-3(3)(b)(iii);
 - (vi) payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;
 - (vii) the contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and
 - (viii) any other requirements specified by the director.
- (5) Work plans shall address any additional requirements outlined in 40 CFR 280.
- (6) The director may waive specific requirements of 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 may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the Fund will be affected.
- (7) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the director shall review and approve or disapprove work plans and the corrective action plan and all associated budgets.
- (8) A request for time and material reimbursement from the Fund must be received by the director within one year from the date the included work was performed or reimbursement shall be denied.
 - (a) if there are any deficiencies in the request, the claimant has 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed.
 - (b) if a release was initially denied eligibility and is subsequently found to be eligible:
 - (i) work conducted prior to the determination of eligibility is not subject to the one-year requirement; and
 - (ii) all work conducted after the determination of eligibility is subject to the one-year requirement.
- (9) The request for final reimbursement from the Fund must be received by the director within one year from the date of the "No Further Action" letter issued by the director or reimbursement shall be denied.
 - (a) if a release is re-opened as provided for in the "No Further Action" letter, payments from the Fund may be resumed when approved by the director.
- (10) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):
 - (a) the director must approve all work plans and associated budgets before the consultant initiates any work; and
 - (b) the contract with the consultant shall comply with Subsections R311-207-3(4).

R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

- (1) In order to receive payment from the Petroleum Storage Tank Trust Fund, a claimant must submit a request for reimbursement to the director.
 - (2) The request for reimbursement must be on the form provided by the director.
 - (a) the form must be properly completed and signed by the claimant and include invoices and other appropriate documentation.
 - (3) Reimbursement will be on a time and material basis as approved in advance by the director.
 - (4) All costs for time and material reimbursement must be itemized at a minimum to show the following:
 - (a) amounts allocated to each approved work plan budget;
 - (b) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
 - (c) sampling, reporting, and laboratory analysis costs;
 - (d) equipment rental and materials;
 - (e) utilities;
 - (f) other direct costs; and
 - (g) other items as determined by the director.
 - (5) All itemized expenses must indicate the full name and address of the company or contractor providing materials or performing services.
 - (6) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the director, with a copy of the original bill provided to the director by the claimant.
 - (a) the claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Section R311-207-5 and Subsections R311-207-4(8).
 - (7) For time and material reimbursement, before receiving payment under Section 19-6-419, the claimant must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the director, unless the director has agreed to other arrangements.
 - (a) the responsible party remains primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.
 - (8) For time and material reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor must include one or more of the following items:
 - (a) a minimum of three competitive bids by responsive bidders. For a bid to be competitive:
 - (i) two of the bids must be from bidders who are not related parties;

(ii) bids must be submitted on the appropriate standardized Bid Summary form in accordance with the "Cost Guidelines for Underground Storage Tank Sites" document dated June 3, 2021, herein incorporated by reference;

(iii) the bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition; and

(iv) the bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(b) sole source justification; or

(c) other documentation as required or requested by the director to document expenses are reasonable, customary, and legitimate.

(9) In accordance with Section 19-6-420, the director may not authorize payment from the Fund for services provided by consultants, contractors, or subcontractors which are not in compliance with the requirements of Rule R311-207 or any other applicable federal, state, or local law.

(10) Any third party claims brought against the responsible party or any occurrence likely to result in third party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the director.

R311-207-5. Customary, Reasonable and Legitimate Expenses.

(1) Costs claimed by the claimant in accordance with Subsection 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

(2) The director may determine the amount of Fund monies that will be reimbursed to a claimant for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of Section R311-207-7, the Cost Guidelines document, or such other methods that are applicable to the item or task.

(3) As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate:

(a) performing abatement;

(b) investigation;

(c) site assessment;

(d) monitoring;

(e) corrective action activities;

(f) providing alternative drinking water supplies; and

(g) settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(4) If a claim that does not comply with the requirements of Rule R311-207 or the Cost Guidelines is returned by the director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(5) The Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the director.

(a) the rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates and the materials at cost to the consultant. Material costs shall include:

(i) adjustments for all available discounts;

(ii) refunds;

(iii) rebates;

(iv) allowances which the consultant reasonably should take under the circumstances; and

(v) credits for proceeds the consultant received or should have received from salvage and material returned to suppliers.

(b) in no event shall the price paid by the Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source.

(c) the consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices, or other documents acceptable to the director.

(d) no reimbursement will be made for labor hours and costs associated with development, patenting, or marketing.

(6) The director may audit or commission an audit of records supporting request for reimbursement or payment at any time.

(a) audits may be determined by random selection or for specific reasons, including the suspicion or discovery of inaccuracies, or deficiencies in complying with regulations.

R311-207-6. Subrogation.

(1) When the state makes a payment from the Petroleum Storage Tank Trust Fund, the state has the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible.

(a) the claimant who receives payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the state's rights and do nothing to prejudice them.

R311-207-7. Consultant Personnel Classifications, Requirements, Rates, Tasks, and Responsibilities.

(1) Consultants must assign to one of the categories identified in the Cost Guidelines, any service time for an individual that is billed to a claimant or directly to the Fund and for which reimbursement is claimed.

(a) by submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills, and experience.

(2) Materials, equipment, and services will be reimbursed in accordance with the Cost Guidelines.

(3) Costs not identified in the Cost Guidelines must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

R311-207-8. Third Party Claims Apportionment.

(1) To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(7)(a), the director may utilize budget projections to allocate coverage available for the payment of third party claims prior to a determination that corrective action has been properly performed and completed.

(a) the director may amend budget projections as frequently as deemed appropriate.

(2) Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the State Risk Manager has approved the settlement.

(3) Apportionment and priority shall be based on the order in which an approved and agreed upon claim is received by the director.

R311-207-9. Consultants Hired by Third Parties.

(1) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(e) must:

- (a) have an approved Petroleum Storage Tank Trust Fund Statement of Qualification in accordance with Subsection R311-207-3(3); and
- (b) charge labor rates in accordance with Section R311-207-7.

(2) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release.

(a) the designation shall be made in writing to the director.

(3) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):

- (a) all work plans and budgets must be pre-approved by the director in accordance with Subsection R311-207-3(10);
- (b) the consultant must comply with Sections R311-207-4 and R311-207-5; and
- (c) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(8) and R311-207-3(9).

KEY: financial responsibility, petroleum, underground storage tanks

Date of Last Change: September 13, 2021

Notice of Continuation: March 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 November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-208	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state and zip:	Salt Lake City, Utah 84114-4840	
Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov

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

General Information

2. Rule catchline:
R311-208. Underground Storage Tank Penalty Guidance
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing UST and aboveground petroleum storage tanks. Section 19-6-425 of the UST Act provides for civil penalties for violations of the Act. Section 19-6-416 of the UST Act provides for penalties for deliveries of petroleum to a regulated petroleum storage tank that is not identified as being properly certified and in compliance.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule provides guidance to the Director of the Division of Environmental Response and Remediation in imposing and negotiating appropriate penalties against the various degrees of violations. The guidance provides that penalty amounts shall be in accordance with the severity of the violation, risk of harm, and the willingness of individuals to cooperate.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .			
Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or			

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 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 to seek penalties.

(2) The procedures in Rule R311-208 are intended solely for the guidance of the director and are not intended, and cannot be relied upon, to create a cause of action against the State.

(3) This guidance and ensuing criteria are intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.

(1) The director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Subsection 19-1-102(3):

(a) payment of the penalty may be extended based on a person's inability to pay;

(i) this should be distinguished from a person's unwillingness to pay.

(ii) in cases of financial hardship, the director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(b) without regard to financial hardship, the director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the director; or

(c) in some cases, the director may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the director. The following criteria shall be used in determining the eligibility of such projects:

(i) the project must be in addition to all regulatory compliance obligations;

(ii) the project preferably should closely address the environmental effects of the violation;

(iii) the actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(iv) the project must primarily benefit the environment rather than benefit the violator;

(v) the project must be judicially enforceable; and

(vi) the project must not generate positive public perception for violations of the law.

R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.

(1) Where the director determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than \$500 per occurrence. Factors that mitigate against a higher penalty are:

(a) a facility's certificate of compliance recently lapsed and product has been delivered; or

(b) a facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the director.

(2) The director may assess a penalty against each violator involved in an illegal delivery occurrence.

(a) if a violator is operating as a deliverer and an owner or operator, the violator may be assessed a penalty in each capacity.

R311-208-5. Factors for Seeking or Negotiating Amount of Section 19-6-425 Penalties.

(1) Under Section 19-6-425, the court establishes penalty amounts rather than the director.

(a) nonetheless, the director may enter a stipulated penalty agreement with the violator.

(2) The director shall consider the following factors when negotiating or calculating a penalty to promote a more swift resolution of environmental problems and promote compliance:

(a) economic benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(b) gravity of the violation. The extent of deviation from the rules and the potential for harm to health and the environment, regardless of the extent of the harm that actually occurred. This factor may be adjusted upward or downward depending on:

(i) degree of cooperation or noncooperation and good faith efforts to comply, taking into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the state;

(ii) willfulness or negligence of the violation;

(iii) history of compliance or noncompliance; and

(iv) other unique factors including how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

(c) environmental sensitivity. The actual impact of the violation(s) that occurred.

(d) number of days of noncompliance.

(e) response and investigation costs incurred by the State and others.

(f) the possible deterrent effect of a penalty to prevent future violations.

(3) 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 determines that a penalty is appropriate under Section 19-6-425, the director may negotiate the penalty based on the following categories and ranges:

(a) Major Violations: \$5,000 to \$10,000 per violation.

(i) this category includes major deviations from the requirements of the rules or act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.

(b) Moderate Violations: \$2,000 to \$7,000 per violation.

(i) this category includes moderate deviations from the requirements of the rules or act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.

(c) Minor Violations: Up to \$3,000 per violation.

(i) this category includes slight deviations from the rules or act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health and the environment, or violations that may have a minor adverse effect on the regulatory program.

(5) The director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance Section to R311-208-5.

KEY: penalties, petroleum, underground storage tanks

Date of Last Change: September 13, 2021

Notice of Continuation: March 27, 2017

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

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-209	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

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

General Information

2. Rule catchline:
R-311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-405.7(4) of the UST Act gives the director of the Division of Environmental Response and Remediation the authority to use the Petroleum Storage Tank Cleanup Fund to investigate, abate, or take corrective action regarding releases from USTs that are not covered by the Petroleum Storage Tank Trust Fund. Subsection 19-6-420(10) of the UST Act allows the director to recover costs incurred for managing and overseeing cleanups of releases not covered by the Petroleum Storage Tank Fund. Section 19-6-424.5 of the UST Act allows the director to finance cleanup costs that are part of an agreement or order.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule is integral to the goals of the UST Act to protect human health and the environment. It provides criteria for use of the Petroleum Storage Tank Cleanup Fund created by Section 19-6-405.7 of the UST Act and the cleanup appropriations made by the legislature. It provides rules for recovery of management and oversight expenses allowed by Subsection 19-6-420(10) of the UST Act.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .		
Agency head or	Brent Everett, Director of the Utah	Date

designee, and title:	Division of Environmental Response and Remediation	(mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.			

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 Rule R311-200.

R311-209-2. Use of State Cleanup Appropriation.

(1) The director shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and state cleanup appropriations, as authorized by Section 19-6-405.7 and Subsection 19-6-424.5(9) respectively, when:

- (a) the release is not fully covered by the Environmental Assurance Program;
- (b) the release is a direct or potential threat to human health or the environment; and
- (c) 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 Rule R311-211; or
- (d) other relevant factors are evident as determined by the director.

R311-209-3. Criteria for Allocating Petroleum Storage Tank Cleanup Funds and State Cleanup Appropriations.

(1) When determining priorities for authorizing action or expenditures from the Petroleum Storage Tank Cleanup Fund and state cleanup appropriations, the 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:

- (a) immediate or direct threat to public health or the environment;
- (b) potential threat to public health or the environment;
- (c) economic consideration and cost effectiveness of the action; and
- (d) technology available; or
- (e) other relevant factors as determined by the director.

R311-209-4. Recovery of Management and Oversight Expenses.

(1) Beginning July 1, 2015, the director, in determining whether to recover management and oversight expenses pursuant to Subsection 19-6-420(10), may consider the following factors:

- (a) the responsible party's ability to pay; and
- (b) any other relevant factors the director determines to be appropriate.

(2) At any time before or after the director initiates collection of management and oversight expenses, the responsible party may apply for an exemption from paying these expenses.

(a) the responsible party shall furnish all documentation and information in the form and manner as prescribed by the director in support of the application.

(b) the director, in 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(1).

KEY: petroleum, underground storage tanks

Date of Last Change: September 13, 2021

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 November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-210	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

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

General Information

2. Rule catchline:
R311-210. Administrative Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
<p>Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks, and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-1-301 of the Environmental Quality Code requires that the Department of Environmental Quality and its boards comply with procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act (APA), and specifies that procedures for an adjudicative proceeding conducted by an administrative law judge are governed by the APA and rules adopted by a board as allowed by Subsection 63G-4-102(6). Sections 63G-4-201 through 205 of the APA allow agencies to enact rules governing certain aspects of adjudicative proceedings, such as: commencement of proceedings, designation of categories of proceedings as formal or informal, and procedures for conducting informal and formal proceedings. Section 63G-4-503 of the APA requires an agency to issue rules regarding declaratory orders.</p>
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
<p>The rules regarding administrative procedures for all divisions within the Department of Environmental Quality are found in Rule R305-7. Rule R311-210 contains only one sentence, stating that underground storage tank administrative proceedings are governed by Rule R305-7. Adjudicative rules are necessary to address agency adjudicative needs not addressed in the Administrative Procedures Act, such as delineating the role of a presiding officer, providing a standard of agency review, designating proceedings as formal or informal, and providing specific procedures for involved formal adjudications. Without the rule, it would be difficult or impossible to conduct UST Act adjudications adequately.</p>

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
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Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.

R311. Environmental Quality, Environmental Response and Remediation.

R311-210. Administrative Procedures.

R311-210-1. Administrative Procedures.

Administrative proceedings are governed by Rule R305-7.

KEY: administrative proceedings, underground storage tanks, hearings, adjudicative proceedings

Date of Enactment or Last Substantive Amendment: August 29, 2011

Notice of Continuation: March 27, 2017

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

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-211	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

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

General Information

2. Rule catchline:
R311-211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-303 of the Hazardous Substance Mitigation Act authorizes the executive director to make rules consistent with the state's responsibilities and involvement with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 19-6-106 of the Solid and Hazardous Waste Act authorizes the Waste Management and Radiation Control Board to make rules under CERCLA, to the extent the board has jurisdiction.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments on this rule have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides essential standards to be used in directing corrective action at contaminated UST and CERCLA sites, and determining when cleanup is complete. This oversight of cleanup is an essential part of the agency's statutory responsibility. By statutory authority the Division of Environmental Response and Remediation administers both the UST and CERCLA programs. Because of this structure and the common cleanup standards that apply in both programs, it is appropriate, from Utah's perspective, to retain both in the rule.

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> .		
Agency head or	Brent Everett, Director of the Utah	Date

designee, and title:	Division of Environmental Response and Remediation	(mm/dd/yyyy):	2/15/2022
Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.			

R311. Environmental Quality, Environmental Response and Remediation.
R311-211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites.
R311-211-1. Definitions.

Definitions are found in Section R311-200.

R311-211-2. Source Elimination.

The initial step in all corrective actions implemented at UST and CERCLA sites is to take appropriate action to eliminate the source of contamination either through removal or appropriate source control.

R311-211-3. Cleanup Standards Evaluation Criteria.

Subsequent to source elimination, cleanup standards for remaining contamination which may include numerical, technology-based or risk-based standards or any combination of those standards, shall be determined on a case-by-case basis, taking into consideration the following criteria:

- (1) The impact or potential impact of the contamination on the public health;
- (2) The impact or potential impact of the contamination on the environment;
- (3) Economic considerations and cost effectiveness of cleanup options; and
- (4) The technology available for use in cleanup.

R311-211-4. Prevention of Further Degradation.

In determining background concentrations, cleanup standards, and significance levels, levels of contamination in ground water, surface water, soils or air will not be allowed to degrade beyond the existing contamination levels determined through appropriate monitoring or the use of other data accepted by the Board or the Director as representative.

R311-211-5. Cleanup Standards.

(1) The following shall be the minimum standards to be met for any cleanup of regulated substances, hazardous material, and hazardous substances at a UST or CERCLA facility in Utah:

- (a) for water-related corrective action, the Maximum Contaminant Limits (MCLs) established under the federal Safe Drinking Water Act or other applicable water classifications and standards; and
- (b) for air-related corrective action, the appropriate air quality standards established under the Federal Clean Air Act.
- (c) Other standards as determined applicable by the Board may be utilized.

(2) Cleanup levels below the MCLs or other applicable water, soil, or air quality standards may be established by the Board on a case-by-case basis taking into consideration R311-211-3 and R311-211-4.

(3) In the case of contamination above the MCL or other applicable water, soil, or air quality standards, if, after evaluation of all alternatives, it is determined that applicable minimum standards cannot reasonably be achieved, cleanup levels above these minimum standards may be established on a case-by-case basis utilizing R311-211-3 and R311-211-4. In assessing the evaluation criteria, the following factors shall be considered:

- (a) quantity of materials released;
- (b) mobility, persistence, and toxicity of materials released;
- (c) exposure pathways;
- (d) extent of contamination and its relationship to present and potential surface and ground water locations and uses;
- (e) type and levels of background contamination; and
- (f) other relevant standards and factors as determined appropriate by the Board.

R311-211-6. UST Facility Cleanup Standards.

(1) This rule incorporates by reference the Initial Screening Levels table dated November 1, 2005. The table lists initial screening levels for UST sites.

(2) If the Director determines that a release from an underground storage tank has occurred, the Director shall evaluate whether the contamination at the site exceeds Initial Screening Levels for the contaminants released. The Director may require owners and operators to submit any information that the Director believes will assist in making this evaluation.

(3) If all contaminants are below initial screening levels, the Director shall evaluate the site for No Further Action determination.

(4) This rule incorporates by reference the Tier 1 Screening Criteria table dated November 1, 2005. The table lists cleanup criteria for UST sites. Tier 1 screening levels are only applicable when the following site conditions are met:

(a) No buildings, property boundaries or utility lines are located within 30 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (1) and (4) above, respectively, and;

(b) No water wells or surface water are located within 500 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (1) and (2) above, respectively.

(5) If any contaminants from a release are above the Initial Screening Levels, the Director shall require owners and operators to submit all relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(a) If all Tier 1 Screening Criteria have been met, the Director shall evaluate the site for No Further Action determination.

(b) If any of the Tier 1 Screening Criteria have not been met owners and operators shall proceed as described below.

(i) Owners and operators shall conduct a site investigation to provide complete information to the Director regarding the factors outlined in R311-211-5(c) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the Director site-specific cleanup standards based upon an analysis of the factors outlined in R311-211-5(c). Alternatively, the owners and operators may propose for the approval of the Director the Initial Screening Levels established in R311-211-6(a) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the Director prior to completing the site investigation. However, if corrective action is implemented in separate phases, the Director will not make a No Further Action determination until all factors outlined in R311-211-5(c) are evaluated.

(iv) Owners and operators may then propose and conduct corrective action approved by the Director to attempt to reach the approved site-specific cleanup standards. If the owners and operators demonstrate that the approved site-specific cleanup standards have been met and maintained based upon sampling at intervals and for a period of time approved by the Director, the Director shall evaluate the site for No Further Action determination.

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the Director may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in R311-211-5(c) for the Director's approval. The Director may also require further investigation to fully define the extent and degree of the contamination if the passage of time or other factors creates the possibility that existing data may no longer be reliable.

R311-211-7. Significance Level.

(1) Where contamination is identified that is below applicable MCLs, water classification standards, or air quality standards or where applicable standards do not exist for either the parameter in question or the environmental media in which the contamination is found, the cleanup standard shall be established using R311-211-3 and will be set between background and the observed level of contamination. Should it be determined that the observed level of contamination will be allowed to remain, this becomes the significance level.

(2) At any time, should continued monitoring identify contamination above the significance level, the criteria of R311-211-3 will be reapplied in connection with R311-211-4 to re-evaluate the need for corrective action and determine an appropriate cleanup standard.

KEY: petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: May 15, 2006

Notice of Continuation: March 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106; 19-6-403

State of Utah
Administrative Rule Analysis
 Revised November 2021

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
	Title No. - Rule No.	
Utah Admin. Code Ref (R no.):	R311-212	Filing ID: (Office Use Only)
Effective Date:	Office Use Only	

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room no.:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state and zip:	Salt Lake City, Utah 84114-4840	
Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov

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

General Information

2. Rule catchline:	R311-212. Administration of the Petroleum Storage Tank Loan Program	
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:	Section 19-6-403 of the Utah Underground Storage Tank (UST) Act gives the Utah Waste Management and Radiation Control Board authority to regulate USTs and petroleum storage tanks and make rules for administration of the petroleum storage tank program. Subsection 19-6-105(1)(g) of the Solid and Hazardous Waste Act gives the board the authority to establish standards governing USTs and aboveground petroleum storage tanks. Section 19-6-409 of the UST Act authorizes the board to make rules for the administration of the Petroleum Storage Tank Loan Program.	
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:	No comments on this rule have been received since the last five-year review.	
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:	The rule is necessary for continued operation of the Petroleum Storage Tank Loan program, and is required by statute. The UST Act contains the basic framework of the loan program, and mandates that the Board make rules for the program's administration.	

Agency Authorization Information

To the agency: Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*.

Agency head or designee, and title:	Brent Everett, Director of the Utah Division of Environmental Response and Remediation	Date (mm/dd/yyyy):	2/15/2022
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Reminder: Text changes cannot be made with this type of rule filing. To change any text, please file an amendment or nonsubstantive change.

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 must be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9).
 - (a) loan applications will be accepted during application periods designated by the director.
- (2) At least one application period shall be designated each calendar year if, on January 1:
 - (a) the current balance due for all outstanding loans is less than 25% of the cash balance of the Petroleum Storage Tank Trust Fund; and
 - (b) the cash balance of the Fund exceeds \$10,000,000.
- (3) If the requirements of Subsections R311-212-2(2)(a) and R311-212-2(2)(b) are not met on January 1, but are met at a later time in the calendar year, the director may designate an application period.
 - (4) An open application period will close if:
 - (a) the current balance due for all outstanding loans exceeds 25% of the cash balance of the Fund; or
 - (b) the cash balance of the Fund is less than \$10,000,000.
 - (5) If an open application period closes as required by Subsection R311-212-2(4), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(1).
- (6) Applications must be received by the director by 5:00 p.m. on the last day of the application period.
- (7) Loan applications received outside the application period will be invalid.

R311-212-3. Eligibility Review.

- (1) The director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5) through 19-6-409(8).
- (2) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must, for 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 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 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 USTs;
 - (b) all regulated USTs owned by the applicant have met the requirements of Subsection 19-6-412(2) and have a current certificate of compliance;
 - (c) the applicant has paid all UST registration fees, interest and penalties which have been assessed; and
 - (d) the applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.
- (4) To meet the requirements of Subsection 19-6-409(5), the loan request must be for the purpose of:
 - (a) upgrading petroleum USTs;
 - (b) replacing petroleum USTs; or
 - (c) permanently closing USTs.
- (5) if an applicant requests a loan for closing USTs which will be replaced by aboveground storage tanks, the loan, if approved, will be only for closing the USTs.
 - (a) the security pledged by the applicant for a loan to replace USTs with aboveground storage tanks will be subject to the limitations in R311-212-6.

R311-212-4. Prioritization of Loan Applications.

- (1) When determined by the director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned.
 - (a) ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:
 - (i) the applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.
 - (ii) the applicant's income is derived solely from operations at UST facilities.
 - (iii) the applicant owns or operates no more than two facilities.
 - (iv) the facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.
 - (v) there are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.
 - (vi) loan proceeds will be used solely for replacing or upgrading petroleum USTs.
 - (vii) all USTs at the facility are greater than 15 years old.
 - (b) one point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.
- (2) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the director by any other method.
 - (3) Applications shall remain in priority order regardless of availability of funds until a new application period is declared.
 - (a) when a new application period begins, priority order of applications which have not been reviewed terminates.
 - (4) An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through 19-6-409(8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

- (1) The applicant shall ensure that the loan application is complete.
 - (a) the completed application with supporting documents must contain all information required by the application.
- (2) If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.
- (3) All costs incurred in processing the application shall be the responsibility of and paid for by the applicant including:
 - (a) appraisals;
 - (b) title reports; or
 - (c) UCC-1 releases.
 - (i) the director may require payment of costs in advance.
 - (ii) the director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.
- (4) The review and approval of the application shall be based on information provided by the applicant, and:
 - (a) review of any and all records and documents on file;
 - (b) verification of any and all information provided by the applicant;
 - (c) review of credit worthiness and security pledged; and
 - (d) review of a site construction work plan.
- (5) The applicant must close the loan within 30 days after the director conveys the loan documents for the applicant's signature.
 - (a) if the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply.
 - (b) an exception to the 30-day period may be granted by the director if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

- (1) When an applicant applies for a loan of greater than \$30,000, the applicant must pledge for security personal or real property which meets or exceeds the following criteria:
 - (a) the loan amount may not be greater than 80% of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position; or
 - (b) the loan amount may not be greater than 60% of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.
- (2) The applicant shall provide acceptable documentation of the value of the property to be used as security using:
 - (a) a current written appraisal, performed by a State of Utah certified appraiser;
 - (b) a current county tax assessment notice; or
 - (c) other documentation acceptable to the director.
- (3) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the director by a title company or appropriate professional person approved by the director.
- (4) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department.
 - (a) the director will accept no less than a second mortgage position on real property pledged for loan security.
- (5) 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) Aboveground storage tanks and real property on which they are located will not be acceptable as security.
- (8) USTs and the real property on which they are located will not be acceptable as security unless:
 - (a) the UST facility offered for security has not had a petroleum release which has not been properly remediated; and
 - (b) the applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in Section R311-212-3.
- (9) If a loan is made without security, the maximum loan repayment period will be seven years.

R311-212-7. Procedure for Making Loans.

- (1) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the director.
- (2) The director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins.
 - (a) the initial disbursement shall be for the lesser of 40% of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done.
 - (b) disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the director.
 - (i) if an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement.
 - (ii) disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the director, following the initial disbursement.
 - (c) if work is not initiated or completed within the time periods established in Subsection R311-212-7(2)(a), the loan balance must be paid within 30 days of notice provided by the director.
- (3) Loan proceeds may not be used to pay UST registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.
- (4) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

- (1) The director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8)(b)(ii).
- (2) Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

- (a) the initial installment payment shall be due on a date established by the director.
- (b) subsequent installment payments shall be due on the first day of each month.
- (i) a notice of payment and due date shall be sent for each subsequent payment.
- (c) non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.
- (3) The director shall apply loan payments received first to penalty, next to interest and then to principal.
- (4) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.
- (5) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.
- (6) The penalty for late loan payments shall be 10% of the payment due.
 - (a) the penalty shall be assessed and payable on payments received by the director more than five days after the due date.
 - (b) a penalty shall be assessed only once on a given late payment.
- (7) Payments are considered received the day of the U.S. Postal Service postmark date or receipt date for payments delivered to the director by methods other than the U.S. Postal Service.
 - (8) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.
 - (9) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.
 - (10) Releases of the director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

- (1) Loans may be considered in default when:
 - (a) two consecutive payments are past due by 30 days or more;
 - (b) when the applicant's ability to receive payments for claims against the Fund lapses; or
 - (c) if the certificate of compliance lapses or is revoked.
- (2) Lapsing under Subsection R311-206-7(5) will not be considered as grounds for default for USTs which are permanently closed.
- (3) The director may declare the full amount of the defaulted loan, penalty, and interest immediately due.
- (4) The director need not give notice of default prior to declaring the full amount due and payable.
- (5) The borrower is liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

- (1) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the director for making loans.
 - (a) Loan Application version 7/14/16
 - (b) Balance Sheet version 7/29/14
 - (c) Loan Agreement version 7/29/14
 - (d) Corporate Authorization version 7/29/14
 - (e) Promissory Note version 7/29/14
 - (f) Extension and Modification of Promissory Note Agreement version 7/29/14
 - (g) Security Agreement version 7/29/14
 - (h) Hypothecation Agreement version 7/29/14
 - (i) General Pledge Agreement version 7/29/14
 - (j) Assignment version 7/29/14
 - (k) Assignment of Account version 7/29/14
 - (l) Trust Deed version 7/29/14
 - (m) Trust Deed Note version 7/29/14
 - (n) Extension and Modification of Trust Deed Note Agreement version 7/29/14
- (2) The director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process.
- (3) The director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

- (1) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Last Change: September 13, 2021

Notice of Continuation: March 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Public Comment -- Proposed Rule Changes
UAC R313-28-140
February 10, 2022

<p>What is the issue before the Board?</p>	<p>Approval from the Board to proceed with formal rulemaking and public comment on a proposed changes to R313-28-140 to amend the qualifications for mammography imaging medical physicists in the State of Utah to ensure consistency with the federal regulations overseen by the Food and Drug Administration. The changes being made will also reduce the regulatory burden on mammography imaging medical physicists by changing the frequency of recertifications from annually to every three years.</p>
<p>What is the historical background or context for this issue?</p>	<p>During the May 13, 2021, Board Meeting a member of the Board questioned why mammography imaging medical physicists must re-certify every year. Division staff reviewed the current state rule in R313-28-140 and looked for supporting documentation regarding the creation of the current state rule. No supporting documentation was found.</p> <p>Based on the review it was determined that the only basis for the annual recertification was that R313-28-140(2)(b) has been interpreted as requiring annual re-certification. Division staff then reviewed the federal regulations for mammography imaging medical physicists overseen by the Food and Drug Administration and determined that there was no requirement in the federal regulations for annual recertification. Division staff also noted some inconsistencies between the federal regulations and the state rules. Based on the reviews it was determined that a three-year recertification period was a better fit for the recertification requirements and that there would not be any negative impact to human health by requiring each mammography imaging medical physicist to recertify every three years instead of annually.</p> <p>The changes being proposed include the addition of the requirement under Initial Qualifications to have 20 contact hours of documented specialized training in conducting surveys of mammography facilities. Because this is a requirement of the federal regulations it is believed that any person wanting to be certified as a mammography imaging medical physicist in Utah will already meet this requirement. The change also updates the language regarding the number of surveys that must be completed but does not change the number of surveys from the ten currently required. The changes update the Continuing Qualifications to clearly state that mammography imaging medical physicists must recertify every three years. The change updates the number of surveys that must be done for continuing qualifications from two per year to three facilities and nine units in a three-year period. The current rule requires two units be surveyed each year for a total of six in a three-year period.</p>

	<p>The change increases this by three. It is not believed that this increase will be an issue for any active mammography imaging medical physicist. The language regarding mammography imaging medical physicists who fail to maintain the required continuing qualifications and need to re-establish their qualifications was amended for consistency with the updated continuing qualifications language.</p> <p>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.</p> <p>The proposed changes to R313-28-140 follow this Executive Summary.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>The Board is authorized under Subsection 19-6-104 to make rules that are necessary to implement the provision of the Radiation Control Act.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
<p>Is Board action required?</p>	<p>Yes. Board approval 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 <i>Utah State Bulletin</i> and conducting a public comment period.</p>
<p>What is the Division Director's recommendation?</p>	<p>The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the March 1, 2022, <i>Utah State Bulletin</i> the proposed changes to UAC R313-28-140 and conducting a public comment period from March 1 to March 31, 2022.</p>
<p>Where can more information be obtained?</p>	<p>Please contact Tom Ball by email at tball@utah.gov or by phone at (801) 536-0251.</p>

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-28. Use of X-Rays in the Healing Arts.

R313-28-140. Qualifications of Mammography Imaging Medical Physicist.

An individual seeking certification by the Board for approval as a mammography imaging medical physicist shall file an application for certification on forms furnished by the Division. The Board may certify individuals who meet the requirements for initial qualifications. To remain certified by the Board as a mammography imaging medical physicist, an individual shall satisfy the requirements for continuing qualifications.

(1) Initial qualifications.

(a) Be certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or the American Board of Medical Physicists in Diagnostic Imaging Physics~~[-or]~~.

(b) Satisfy the following educational and experience requirements:

(i) ~~Have a master's or higher degree from an accredited university or college in physical sciences;[-and]~~

~~(ii) have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and~~

~~(iii) have conducted surveys of at least one mammography facility and a total of at least ten mammography units under the direct supervision of a mammography imaging medical physicist approved by the Board. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.~~

~~[-(ii) Have two years full-time experience conducting mammography surveys. Five mammography surveys shall be equal to one year full-time experience.]~~

(2) Continuing qualifications.

(a) ~~To remain certified by the Board, a certified mammography imaging medical physicist shall submit an application for recertification every three years. During the three-year period [after initial certification and for each subsequent three-year period,] the individual shall:~~

~~(i) earn 15 hours of continuing educational credits in mammography imaging; and~~

~~(ii) perform at least three mammography facility surveys and a total of at least nine mammography unit surveys. No more than one survey of a specific facility within a ten-month period or a specific unit within a period of 60 days can be counted towards this requirement.~~

~~[-earn 15 hours of continuing educational credits in mammography imaging; and~~

~~(b) Perform at least two mammography surveys during the 12-month period from June 1 and May 31 to remain certified by the Board.]~~

(3) Mammography imaging medical physicists who fail to maintain the required continuing qualifications stated in Subsection R313-28-140(2) shall re-establish their qualifications before independently surveying another mammography facility. To re-establish their qualifications, mammography imaging physicists who fail to meet:

(a) ~~[F]the continuing education requirements of Subsection R313-28-140(2)(a)(i) [must]shall obtain a sufficient number of continuing educational credits to bring their total credits up to the required 15 in the previous three years[-]; or~~

~~(b) [F]the continuing experience requirement of Subsection R313-28-140(2)(b)(a)(ii) [must]shall obtain experience by performing a sufficient number of surveys to bring their total surveys up to at least three mammography facility surveys and a total of at least nine mammography unit surveys under the direct supervision of a mammography imaging medical physicist approved by the Board. No more than one survey of a specific facility within a ten-month period or a specific unit within a period of 60 days can be counted towards this requirement.[by surveying two mammography facilities for each year of not meeting the continuing experience requirements under the supervision of a mammography imaging medical physicist approved by the Board.]~~

KEY: dental, X-rays, mammography, beam limitation

Date of Enactment or Last Substantive Amendment: March 1, 2019

Notice of Continuation: April 8, 2021

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Final Adoption
Amendments to UAC R315-307
February 10, 2022

<p>What is the issue before the Board?</p>	<p>Final approval from the Board is needed to adopt changes to R315-307 to clarify the applicability statements to include Director discretion to approve only landtreatment disposal operations that provide an agronomic benefit and remove high-chloride wastes as being allowed for landtreatment disposal because they do not provide an agronomic benefit.</p>
<p>What is the historical background or context for this issue?</p>	<p>At the Board meeting on December 9, 2021, the Board approved the proposed changes to R315-307 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published in the January 1, 2022, issue of the Utah State Bulletin (Vol. 2021, No. 01).</p> <p>Selected pages from the Utah State Bulletin showing the publication of the proposed changes follow this Executive Summary.</p> <p>The public comment period for this rulemaking ended on February 1, 2022. No comments were received.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>The Board is authorized under Subsection 19-6-105 to make rules that establish minimum standards for protection of human health and the environment for the treatment and disposal of solid waste.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
<p>Is Board action required?</p>	<p>Yes. Board approval for final adoption of the rule changes is necessary.</p>
<p>What is the Division Director's recommendation?</p>	<p>The Director recommends the Board approve final adoption of the changes to UAC R315-307 as published in the January 1, 2022, issue of the Utah State Bulletin and set an effective date of February 14, 2022.</p>
<p>Where can more information be obtained?</p>	<p>Please contact Tom Ball by email at tball@utah.gov or by phone at (801) 536-0251.</p>

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed December 02, 2021, 12:00 a.m. through December 15, 2021, 11:59 p.m.

Number 2022-01
January 01, 2022

Nancy L. Lancaster, Managing Editor

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

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

Office of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

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institution in Utah accredited by the Northwest Accreditation Commission that offers post secondary courses.

(5) The post secondary institution selected by a student who receives a centennial scholarship shall complete the early graduation centennial scholarship certificate and submit it to the Superintendent.

(6) Upon receipt of the early graduation centennial scholarship certificate, the Superintendent shall verify the information, and reimburse the institution an amount set forth in the following schedule in the fiscal year during which the student enrolls in a post secondary institution.

(7) Except as provided in Section R277-703-7, to be eligible for the scholarship, the student must enroll in an eligible post secondary institution within one calendar year of graduation.

(8)(a) A student who graduates at the end of the eleventh grade year shall receive a full centennial scholarship.

(b) A student who graduates at the end of the first quarter of the twelfth grade year shall receive 75 percent of the centennial scholarship amount.

(c) A student who graduates at the end of the second quarter of the twelfth grade year shall receive 50 percent of the centennial scholarship amount.

(d) A student who graduates at the end of the third quarter of the twelfth grade year shall receive 25 percent of the centennial scholarship amount.

(e) A student who graduates at the end of the first trimester of the twelfth grade year shall receive 67 percent of the centennial scholarship amount.

(f) A student who graduates at the end of the second trimester of the twelfth grade year shall receive 33 percent of the centennial scholarship amount.

R277-703-7. Student Deferrals.

(1) Except as provided in Subsection (5) and as allowed in Subsection 53F-2-501(4), a student who is eligible for a centennial scholarship, as described in Subsection 53F-2-501(3) and this R277-703, may make a request to the Board that the Board defer consideration of the student for the scholarship for a set period of time up to five years.

(2) The Superintendent shall:

(a) create an application, for the Board's approval, for a student seeking a deferral to request the deferral; and

(b) make the application described in Subsection (2)(a) available online.

(3) A student seeking a deferral described in Subsection (1) shall file a request for deferral with the Superintendent on or before:

(a) the second Monday in February for a student who graduated on or before December 31 of a school year; and

(b) the second Monday in July for a student who graduated on or before June 15 of a school year.

(4)(a) If a student's request for a deferral is denied by the Superintendent, the student may request an appeal of the Superintendent's decision.

(b) The Law and Licensing Committee shall review a student's appeal within 60 days of receipt of the appeal.

(c) The Superintendent shall inform a student requesting appeal of the Law and Licensing Committee's decision.

(5) A student's centennial scholarship expires five years from the date the eligible student graduated.

KEY: curricula, early graduation, graduation requirements, scholarships

Date of Last Change: October 10, 2017

Notice of Continuation: August 14, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1); 53E-3-401

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R315-307	Filing ID 54189

Agency Information

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

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

General Information

2. Rule or section catchline:
R315-307. Landtreatment Disposal Standards
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of the change is to clarify the applicability statements to include Director discretion to approve only landtreatment disposal operations that provide an agronomic benefit. This was always the intent of this rule and is how the Division of Waste Management and Radiation Control, Waste Management (Division) has applied this rule in the past and, to be consistent with that intent, high-chloride wastes will now be listed as undesirable for landtreatment disposal because they do not provide an agronomic benefit.
There are no federal standards for land application of solid wastes. The Division has historically interpreted Rule R315-307 as only applicable to wastes that provide an agronomic benefit to the soil. The addition of high-chloride wastes to the list of undesirable wastes is also consistent with the historical interpretation of this rule and provides additional clarification. Currently, Subsection R315-307-3(2) provides standards to prevent nutrient overload that may inhibit crops from being successful, and Subsection

R315-307-3(7) limits food-chain crops without Director approval. The proposed changes will clarify that the standards of Rule R315-307 in its entirety should only be utilized when there are agronomic benefits.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

At Subsection R315-307-1(1), language is added to the applicability statement requiring the wastes approved for disposal under this rule to have a reasonable agronomic benefit to soils.

Subsection R315-307-2(d) is being removed from this rule to provide the Division Director with an approval role in regard to industrial solid waste facilities. If an industrial waste proves to have an agronomic benefit, it may be considered for disposal under this rule.

High-chloride wastes were added to the list of undesirable wastes in Subsection R315-307-3(1) because they are an inhibitor to crop growth.

In addition, the Division has corrected typographical and formatting errors in this rule.

As stated above, there are only seven facilities permitted to operate under Rule R315-307 and all seven are small businesses. Therefore, it is not anticipated that this rule change will result in any cost or savings to non-small businesses.

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

It is not anticipated that this rule change will result in any cost or savings to persons other than small businesses, non-small businesses, state or local entities because there are only seven facilities permitted to operate under Rule R315-307 and all are small businesses which are addressed in 5(C) above.

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

As stated above, the Division is not able to estimate the compliance costs for persons affected by this rule change.

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

It is not possible to estimate the costs or savings that may result from this rule change due to the lack of information available to the Division. Kimberly D. Shelley, Executive Director

Fiscal Information

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

A) State budget:

It is not anticipated that this rule change will result in any cost or savings to the state budget because the state does not have any facilities permitted to operate under Rule R315-307.

B) Local governments:

It is not anticipated that this rule change will result in any cost or savings to local governments because none of the facilities permitted to operate under Rule R315-307 are owned and operated by local governments.

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

There are currently seven facilities permitted to operate under Rule R315-307. It is not anticipated that this rule change will result in any cost or savings to six of the seven facilities. This rule change may result in costs to the seventh facility but because the Division does not have specific information regarding the facility's current costs and revenue, the Division is not able to estimate any cost or benefits.

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

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

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

NOTICES OF PROPOSED RULES

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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Section 19-6-104	Section 19-6-105	Section 19-6-108
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Public Notice Information

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

A) Comments will be accepted until:	02/01/2022
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10. This rule change MAY become effective on:	02/14/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Douglas J. Hansen, Division Director	Date:	12/09/2021
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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-307. Landtreatment Disposal Standards.

R315-307-1. Applicability.

(1) These standards apply to any facility that engages in the landtreatment, landfarming, or landspreading disposal of solid waste in a manner that has a reasonable agronomic benefit to soils.

(2) These standards do not apply to:
 (a) a facility that uses sewage sludge, woodwaste, or other primarily organic sludge in recycling operations as specified in Section R315-312-4;

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues; or

(c) inert waste or demolition waste; ~~or~~
~~(d) industrial solid waste facilities;~~

(3) The landtreatment of domestic sewage sludge and septage is exempt from the requirements of Rule R315-307 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

(4) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in ~~[Subs]~~Section R315-303-2.

(5) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat ~~[an]~~any run-off from a 25 year storm, and divert ~~[an]~~any run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3~~[(6)]~~~~[(7)]~~~~[(4)]~~.

R315-307-3. Standards for Maintenance and Operation.

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage, ~~or~~ infectious waste, or high-chloride wastes;

(2) avoid applying wastes at rates greater than ~~ten~~10 times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors, and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and ~~[an]~~any other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Director is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

KEY: solid waste management, waste disposal

Date of Last Change: 2022[April 25, 2013]

Notice of Continuation: January 12, 2018
 Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R398-2	Filing ID 54203

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Children with Special Health Care Needs	
Room no.:	4453	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144610	
City, state and zip:	Salt Lake City, UT 84114-4610	
Contact person(s):		
Name:	Phone:	Email:
Joyce McStotts	801-273-2956	jmcstotts@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R398-2. Newborn Hearing Screening: Early Hearing Detection and Intervention (EHDI) Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The changes update definitions, clarify best practices and protocols, and provide clarification and to update formatting to meet Executive Order No. 2021-12 and adhere to the deadline date of 01/01/2022.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The changes update definitions, clarify best practices and protocols already in place including the CMV Registry; therefore, no change in processes as these processes are already being followed. The changes also update formatting to meet Executive Order No. 2021-12 and adhere to the deadline date of 01/01/2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
Minimum to no impact on the state budget due to the process and best practices already in place and adhered to.
B) Local governments:
Minimum to no impact on local governments due to the process and best practices already in place and adhered to.
C) Small businesses ("small business" means a business employing 1-49 persons):
Minimum to no impact on small businesses due to the processes and best practices already in place and adhered to. Reporting requirements and penalties are already in place.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Minimum to no impact on non-small businesses due to the processes and best practices already in place and adhered to. Reporting requirements and penalties are already in place.
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 <i>agency</i>):
Minimum to no impact on persons other than small businesses due to the processes and best practices already in place and adhered to. Audiologists adhere to and recommend best practices. Penalties are already in place.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
Minimum to no impact on affect persons due to the processes and best practices already in place and adhered to. Reporting requirements and penalties are already in place
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
There is minimum to no fiscal impact on businesses due to the processes and best practices already followed by the industry. Nathan Checketts, Executive Director
6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE
EnergySolutions, LLC
February 10, 2022

<p>What is the issue before the Board?</p>	<p>On January 21, 2022, EnergySolutions, LLC submitted a request to the Director of the Division of Waste Management and Radiation Control for a one-time site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks approval dispose, in EnergySolutions' Mixed Waste Landfill Cell, waste containing the D009 or U151 High Mercury-Organic Subcategory and High Mercury-Inorganic Subcategory hazardous waste codes that have been treated using stabilization/amalgamation technologies.</p>
<p>What is the historical background or context for this issue?</p>	<p>EnergySolutions requests approval to receive and dispose, in EnergySolutions' Mixed Waste Landfill Cell, waste containing the D009 or U151 High Mercury-Organic Subcategory and High Mercury-Inorganic Subcategory hazardous waste codes that has been treated using stabilization/amalgamation technologies. Furthermore, EnergySolutions will perform the stabilization/amalgamation treatment on D009 and U151 High Mercury Subcategory waste streams that have not been treated prior to arrival at the EnergySolutions Clive facility. All actions will be performed in accordance with EnergySolutions' State-issued Part B Permit.</p> <p>The listed treatment technology in 40 CFR 268.40 for the D009 High Mercury-Organic Subcategory is either incineration (IMERC) or retorting/roasting for mercury recovery (RMERC). The listed treatment technology for the D009 High Mercury-Inorganic Subcategory and for U151 is RMERC.</p> <p>The need and justification for this action are as follows:</p> <p>The intent of the RMERC treatment process is to recover elemental mercury for recycling. However, radioactive mercury cannot be recycled and the RMERC process generates secondary waste (radioactive elemental mercury) which requires additional treatment by amalgamation (a stabilization technology) prior to disposal.</p> <p>The IMERC technology is also intended to be a mercury recovery technology where the waste is incinerated, and the mercury recovered in the ash or in a specific off-gas control system. For radioactive mercury, both the ash and the control equipment/media will require further treatment. Furthermore, IMERC involves an extra handling step for the radioactive residue.</p> <p>Successful chemical stabilization of High Mercury-Inorganic Subcategory wastes has been demonstrated to achieve a measure of performance equivalent to the required methods which require two treatment methods (RMERC and stabilization) with no detrimental effect</p>

	<p>to human health or the environment. The U.S. Environmental Protection Agency (US EPA) has issued a Determination of Equivalent Treatment (DET) for these High Mercury Subcategory wastes that were chemically stabilized. In the EPA’s determination, they concluded that for waste streams that are radioactive and contain mercury, the recovery portion of RMERC may not be appropriate and that alternative treatment processes should be pursued.</p> <p>The US EPA has reviewed the treatment of mercury-bearing waste in a Federal Register Notice (68 FR 4481). In this notice, the US EPA concluded that treatment of mercury waste is possible and it is suggested that stakeholders should use the site specific treatment variance process to achieve approval for the treatment of high subcategory mercury wastes. The notice specifically designates an example of when this would be appropriate as the case of a high mercury subcategory waste that is also radioactive.</p> <p>This variance request consists of waste that may be shipped to EnergySolutions over the next year. To date, EnergySolutions has disposed of approximately 12,600 cubic feet of treated High Mercury Subcategory waste. From knowledge of the current market of High Mercury Subcategory Waste requiring treatment or disposal, and from past experience receiving this type of waste, EnergySolutions anticipates less than 4000 cubic feet of additional High Mercury Subcategory waste for disposal in the next year under this treatment variance.</p> <p>EnergySolutions has submitted variance requests for similar waste every year since 2001. The Board has granted each of these requests. The facility has been successful in treating these High Mercury Subcategory wastes.</p> <p>A notice for public comment was published in the <i>Salt Lake Tribune</i>, the <i>Deseret News</i> and the <i>Tooele County Transcript Bulletin</i>. The 30-day public comment period began February 7, 2022 and will end March 8, 2022.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-268.44 of the Utah Administrative Code.</p>
<p>Is Board action required?</p>	<p>No. This is an informational item before the Board.</p>
<p>What is the Division/Director’s recommendation?</p>	<p>The Director will provide a recommendation following the public comment period at the next Board meeting.</p>
<p>Where can more information be obtained?</p>	<p>For technical questions, please contact Tyler Hegburg (801) 536-4271. For legal questions, please contact Bret Randall at (801) 536-0284.</p>

January 21, 2022

CD-2022-023

Mr. Doug Hansen
Director
Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, UT 84114-4880

Subject: EPA ID Number UTD982598898[✓] - Request for a Site-Specific Treatment
Variance for Wastes Containing High-Subcategory Mercury

Dear Mr. Hansen,

EnergySolutions hereby requests a variance to receive an exemption from Utah Administrative Code (UAC) R315-268-40(a)(3) for wastes that are characterized with hazardous waste codes D009 or U151, High Mercury-Organic Subcategory or High Mercury-Inorganic Subcategory. This request is submitted in accordance with the requirements of UAC R315-260-19.

The regulatory requirement authorizing this request is found in UAC R315-268-44 which allows a site-specific variance from an applicable treatment standard provided that the following condition is met:

UAC R315-268-44(h)(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible.

EnergySolutions requests approval to dispose, in EnergySolutions' Mixed Waste Landfill Cell, waste containing the D009 or U151 High Mercury-Organic Subcategory and High Mercury-Inorganic Subcategory hazardous waste codes that have been treated using stabilization/amalgamation technologies. EnergySolutions will perform the stabilization/amalgamation treatment on D009 and U151 High Mercury Subcategory waste streams that have not been treated prior to arrival at the EnergySolutions Clive facility. At the time of disposal, the waste will be verified to have a mercury concentration less than 0.2 mg/L using the Toxicity Characteristic Leaching Procedure (TCLP) or less than 0.25 mg/L TCLP if the waste is a soil matrix. All actions will be performed in accordance with EnergySolutions' state-issued Part B Permit.

The D009 High Mercury-Organic Subcategory is described in the “Treatment Standards for Hazardous Waste” table in 40 CFR 268.40 (incorporated into UAC R315-268-40 by reference). The description is as follows:

Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)

Likewise, the D009 High Mercury-Inorganic Subcategory’s description is as follows:

Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory)

The U151 hazardous waste code does not delineate between organic or inorganic; the description simply states the following:

U151 (mercury) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.

The listed treatment technology in 40 CFR 268.40 for the D009 High Mercury-Organic Subcategory is either incineration (IMERC) or retorting/roasting for mercury recovery (RMERC). The listed treatment technology for the D009 High Mercury-Inorganic Subcategory and for U151 is RMERC.

The need and justification for this action are as follows:

- The intent of the RMERC treatment technology is to recover elemental mercury for recycling. However, radioactive mercury cannot be recycled and the RMERC process generates secondary waste (radioactive elemental mercury) which requires additional treatment by amalgamation (a stabilization technology) prior to disposal.
- The IMERC technology is also intended to be a mercury recovery technology where the waste is incinerated and the mercury recovered in the ash or in a

specific off-gas control system. For radioactive mercury, both the ash and the control equipment/media will require further treatment. Furthermore, IMERC involves an extra handling step for the radioactive residue.

- Both IMERC and RMERC are described in Table 1 of UAC R315-268-42. Both descriptions state that

[A]ll wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).

For RMERC, this treatment standard is explained as an additional D009 subcategory:

[N]onwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury and that are residues from RMERC only.

The Land Disposal Restriction (LDR) treatment standard for this subcategory is 0.2 mg/L TCLP (or 0.25 mg/L TCLP alternative treatment standard for contaminated soil described in UAC R315-268-49). For IMERC, the ash and/or control equipment media will be a newly generated hazardous waste and would therefore be required to meet the LDR treatment standard for mercury of 0.2 mg/L. The disposal standard proposed by EnergySolutions meets the LDR TCLP concentration in a single step.

- Successful chemical stabilization of High Mercury-Inorganic Subcategory wastes has been demonstrated to achieve a measure of performance equivalent to the required methods which require two treatment methods (RMERC and stabilization) with no detrimental effect to human health or the environment. The U.S. Environmental Protection Agency (US EPA) has issued a Determination of Equivalent Treatment (DET) for these High Mercury Subcategory wastes that were chemically stabilized. In the EPA's determination, they concluded that for waste streams that are radioactive and contain mercury, the recovery portion of RMERC may not be appropriate and that alternative treatment processes should be pursued. A copy of this letter is attached for reference.

- The US EPA has reviewed the treatment of mercury-bearing waste in Federal Register Notice 68 FR 4481. In this notice, the US EPA concluded that treatment of mercury waste is possible and it is suggested that stakeholders should use the site specific treatment variance process to achieve approval for the treatment of high subcategory mercury wastes. The notice specifically designates an example of when this would be appropriate as the case of a high mercury subcategory waste that is also radioactive.
- *EnergySolutions* has requested similar site-specific treatment variances for High Mercury Subcategory waste in letters dated November 21, 2001; October 21, 2003; April 28, 2004; November 8, 2004; November 29, 2005; December 20, 2006; January 25, 2008; January 20, 2009; January 27, 2010; February 15, 2011; March 21, 2012; March 7, 2013; March 4, 2014; April 21, 2016; September 27, 2017, March 25, 2019 and August 25, 2020. These variance requests were approved on January 8, 2002; December 11, 2003; June 10, 2004; January 13, 2005; January 12, 2006; February 8, 2007; March 13, 2008; March 12, 2009; April 8, 2010; May 12, 2011; May 10, 2012; April 11, 2013; April 10, 2014; June 9, 2016; September 27, 2017; May 9, 2019 and November 19, 2020 respectively.
- Over the years that this variance has been granted, *EnergySolutions* and generators have consistently been successful at treating high subcategory mercury to LDR compliant levels.

This variance request consists of waste that is expected to be disposed by *EnergySolutions* over the next year. To date, *EnergySolutions* has disposed of approximately 12,600 cubic feet of treated High Mercury Subcategory waste. From knowledge of the current market of High Mercury Subcategory Waste requiring treatment or disposal, and from past experience receiving this type of waste, *EnergySolutions* anticipates less than 4,000 cubic feet of additional High Mercury Subcategory waste for disposal in the next year under this treatment variance.

EnergySolutions requests that a variance be granted to allow the disposal of High Mercury Subcategory waste that has been treated either to the 0.2 mg/L TCLP standard for hazardous waste or the 0.25 mg/L TCLP standard for contaminated soil.



Mr. Doug Hansen
CD-2022-023
January 21, 2022
Page 5 of 5

The name, phone number, and address of the person who should be contacted to notify EnergySolutions of decisions by the Director is:

Mr. Vern Rogers
Director, Regulatory Affairs
EnergySolutions LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
(801) 649-2000

Should there be any questions to this request, please contact me at (801) 649-2043.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve D. Gurr".

Steve D. Gurr
2022.01.21 09:43:14
-07'00'

Steve D. Gurr
Environmental Engineer

enclosure

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Generator: Brookhaven National Laboratory
Generator # / Waste Stream #: 8000-22-206-21 JZH
Waste Stream Name: BNL Treated Mercury Soil

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. George J. Malosh
U.S. Department of Energy
Brookhaven Group Building 464
Upton, NY 11973-5000

Dear Mr. Malosh:

EPA has reviewed your request for a determination of equivalent treatment as authorized by 40 CFR 268.40(h) for the mercury contaminated waste from your facility that will be the subject of treatability studies.

Based on the information provided in your application and conversations between your staff and mine, EPA is approving the request for a determination of equivalent treatment. EPA agrees that RMERC is not appropriate for this waste, due to the generation of elemental mercury that is contaminated with radioactive materials and that has no current use via recycling. Instead, the facility will need to meet a replacement concentration-based treatment standard for this waste, which is detailed in the enclosed determination. This standard does not replace any other applicable federal, state, or local requirements as specified in the facility's waste analysis plan. Additionally, all wastes subject to this determination must be disposed at a facility permitted to accept the radioactive elements present in the waste following treatment.

Enclosed you will find our determination on your request. If you need further assistance, please contact John Austin, Waste Treatment Branch (703/308-0436).

Sincerely yours,

Elizabeth A.
Cotsworth, Acting
Director
Office of Solid
Waste

Enclosure

cc: Jim Thompson, OWPE
RCRA Hotline

Generator: Brookhaven National Laboratory
Generator # / Waste Stream #: ~~BNL-27-614~~ 224
Waste Stream Name: BNL Treated Mercury Soil
Determination of Equivalent Treatment
40 CFR 268.42(b)
Notification of Acceptance

Notification Number: OSW-DE016-0698

Requesting Facility: Brookhaven National Laboratory

Facility Address: U. S. Department of Energy
Brookhaven Group Building 464
Upton, NY 11973-5000

EPA Facility ID #: NY7890008975

Facility Representatives: Gail Penny, Project Manager
(516)344-3229; Email: gpenny@bnl.gov

Glen Todzia, Project Engineer
(516)344-7488

Date of Request: July 1, 1998

Waste Description for Which Replacement Standard is Sought:

The subject wastes consist of (a) treatability samples totaling 4990 kg of RCRA characteristic mercury- and radioactive-contaminated soils and (b) an unspecified amount of residues and newly generated wastes resulting from multiple treatability studies on these samples. The treatability samples are soils that are mostly sand but contain some gravel. Approximately 5% of the treatability sample wastes consists of pieces of glass, metal, and plastic. A summary waste description is given in Table 1.

The subject waste soils were excavated in 1997 from a former land disposal area ("Chemical Holes Area") for miscellaneous laboratory wastes at Brookhaven National Laboratory, in Long Island, New York. The retrieval was performed as a CERCLA removal action. Segregation of the excavated waste into two waste streams was performed by sieving with a 2-inch sieve as the waste was excavated. Only materials that passed through the 2-inch sieve are the subject of the planned treatability studies.

Basis of Request:

The subject mercury-contaminated waste soils (above 260 ppm mercury) are also contaminated with low levels of radioactive materials. The LDR technology specific treatment standard for this waste is RMERC (retorting or roasting with recovery of the mercury for reuse). Retorting or

roasting of the waste is inappropriate because any mercury recovered would still be contaminated with radioactive materials, which would prohibit its recycle or reuse as elemental mercury. The

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Table 1. Initial Waste Descriptions

Waste Container ID	Approximate Volume (yd ³)	Approximate Weight (kg)	Total Mercury Concentration (mg/kg)	TCLP Mercury Concentration (mg/l)	Primary Mercury Species	Other RCRA Constituents that exceed TC Regulatory Levels or are Listed Wastes	Waste Description and Regulatory Subcategory	Assigned EPA Waste Code	Applicable LDR Treatment Standard
Bin 1	2	2495	6750	3.56	Elemental*	None Identified	Nonwastewater, High Mercury Subcategory*	D009	RMERC
Bin 2	2	2495	15,000	0.263	Elemental*	None Identified	Nonwastewater, High Mercury Subcategory*	D009	RMERC 1. Determined by visual inspection.

2. Nonwaste waters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW 846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including residues from RMERC.

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elemental mercury would therefore require further treatment (amalgamation) prior to its ultimate disposal. The subject wastes are proposed to be treated by a variety of methods as part of a treatability study to evaluate treatment options for other legacy wastes within the U. S. Department of Energy (DOE) complex.

DOE has requested a Determination of Equivalent Treatment for the treated treatability study samples and any newly generated >260 ppm Hg wastes that may result from these treatability studies (i.e., treatment residues). The proposed waste disposal location for the treatability study wastes that meet the assigned substitute treatment standard (and any other applicable LDR waste treatment standards) is the Envirocare of Utah, Clive, Utah, low level radioactive waste landfill. Alternatively, the DOE Hanford Site, Richland, Washington low level radioactive waste landfill

Generator: Brookhaven National Laboratory

Generator # / Waste Stream #: 8006-000-0016 01 JLH

Waste Stream Name: BNL Treated Mercury Soil

may be used. Other landfills that become available in the future and that meet all EPA and other agency requirements (e.g., NRC, DOE, or State) for disposal of such waste may also be considered. In the absence of the requested DET replacement standard, all treatment residues would have to be re-treated by retorting or roasting. Any recovered mercury would have to be amalgamated prior to disposal as low level radioactive waste.

EPA is requested to assign a replacement mercury treatment standard of 0.2 mg/kg TCLP to these treated treatability samples and any resulting newly generated treatment residues. The treated samples and newly generated wastes from the treatability study would still be required to meet applicable existing LDR treatment standards for underlying hazardous constituents other than mercury.

Previously Applicable Treatment Standard for Which Equivalency is Granted:

Waste codes of concern		Nonwastewater
D009	Non wastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues from RMERC (High Mercury Inorganic Subcategory	Mercury RMERC

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Replacement Treatment Standards:

Waste codes of concern		Nonwastewater
D009	Non wastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including	Mercury 0.20 mg L TCLP

Generator: Brookhaven National Laboratory
Generator # / Waste Stream #: 8408-22 6246-01
Waste Stream Name: BNL Treated Mercury Soil

incinerator residues from RMERC (High
Mercury Inorganic Subcategory

Compliance with these standards, as approved below, does not relieve the facility from compliance with any other applicable treatment standards associated with these wastes. This standard does not replace any other applicable federal, state, or local requirements as specified in the facility's waste analysis plan. Additionally, all wastes subject to this determination must be disposed at a facility permitted to accept the radioactive elements present in the waste.

Authorities and References:

A Determination of Equivalent Treatment is governed by 40 CFR 268.42(b), which states: "(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section.... The applicant must submit information demonstrating that his treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination."

The above provision was further clarified in the preamble for the Land Disposal Restriction for Third Third Scheduled Wastes: Final Rule, 55 FR at 22536, (June 1, 1990) as follows: "when EPA requires the use of a technology (or technologies), a generator or treater may demonstrate that an alternative treatment method can achieve the equivalent level of

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performance as that of the specified treatment method [40 CFR 268.42(b)]. This demonstration is typically both waste-specific and site-specific and may be based on: (1) the development of a concentration based standard that utilized a surrogate or indicator compound that guarantees effective treatment of the hazardous constituents; (2) the development of a new analytical method for quantifying the hazardous constituents, and (3) other demonstrations of equivalence for an alternative method of treatment based on a statistical comparison of technologies, including a comparison of specific design and operating parameters."

Justification for the Equivalent Treatment Standard:

Generator: Brookhaven National Laboratory
 Generator # / Waste Stream #: 8008-?? *6-046 61* *JCH*
 Waste Stream Name: BNL Treated Mercury Soil

In the context of this treatability study situation, roasting or retorting and recovery of mercury (RMERC) from High Mercury-Inorganic nonwastewater wastes does not appear to be an appropriate treatment method if the wastes are also radioactive. This is because the recovered mercury is expected to be still classified as radioactive material and as such will not be recyclable but will require further treatment prior to its ultimate disposal. Therefore, the earlier recovery step appears not to serve a useful purpose in this particular mixed waste context, and would involve additional waste handling with the attendant concerns about potential exposure to radionuclides. The requested replacement standard for the limited quantity of waste to be subject to the treatability studies is the current LDR concentration-based treatment standard for Low Mercury-Inorganic nonwastewaters that have undergone RMERC, 0.20 mg/L TCLP. Therefore, the wastes will be subject to treatment standards equivalent to those for the residues of the RMERC process, but without having to first undergo a non-useful RMERC step. This is an appropriate measure of equivalent performance and is sufficiently protective of human health and the environment in this particular situation.

Based upon the information submitted, the factors identified above, and the conditions for treatment and disposal set out above, I have determined that the petition for Determination of Equivalent Treatment submitted by DCE on May 20, 1998 is hereby granted, effective upon my signature.

Dated:

Elizabeth A. Cotsworth, Acting Director
 Office & Solid Waste

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Attachment I - Analytical Data for Wastes to be Subjected to the Treatability Studies

B-25 Container #1

Parameter	Concentration
Mercury (total)	6750 mg/kg
Mercury (TCLP)	3.56 mg/L
Gross Alpha	4560 pCi/g
Gross Beta	525 pCi/g
Plutonium - 238	72.6 pCi/g
Plutonium - 239/240	19.7 pCi/g

Generator: Brookhaven National Laboratory
 Generator # / Waste Stream #: ~~8008-22~~ ^{J-4} ~~Cell 01~~
 Waste Stream Name: BNL Treated Mercury Soil

Americium - 241	7140 pCi/g
Strontium - 90	2.15 pCi/g

B-25 Container #2

Parameter	Concentration
Mercury (total)	18,000 mg/kg
Mercury (TCLP)	0.263 mg/L
Gross Alpha	24.9 pCi/g
Gross Beta	35.9 pCi/g
Plutonium - 238	7.06 pCi/g
Plutonium - 239/240	5.87 pCi/g
Americium - 241	28.67 pCi/g
Strontium - 90	35.5 pCi/g

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Attachment 2- DOE Description of Treatment Technologies to be Included in Treatability Studies

The DOE Mixed Waste Focus Area (MWFA) Mercury Contamination Product Line Mercury Working Group (HgWG) is sponsoring demonstrations of alternative advanced technologies for treating toxicity characteristic mixed waste containing more than 260 ppm total mercury concentrations to determine which technologies can produce stable products for disposal that are acceptably protective of human health and the environment. The initial wastes and the final waste forms are to be tested using TCLP to determine if the final waste forms are no longer toxicity characteristic hazardous waste, meet the applicable replacement LDR treatment standard for mercury, and meet any other LDR waste treatment standards determined to be applicable for this waste. Informational testing to provide additional data for use by EPA will also be conducted, including measurement of mercury vapor pressure over the final waste forms, and selected additional leaching tests to be determined in coordination with EPA Office of Solid Waste. EPA's contractor Professor David Kosson (Rutgers University), Brookhaven National Laboratory (BNL), and the MWFA/HgWG.

Mercury Stabilization

A BNL sulfur polymer cement process will be one of the mercury stabilization processes demonstrated.

Commercial vendors will also be contracted to perform stabilization demonstrations. These vendors will be selected by the HgWG through an open bidding process. Each stabilization process will have been previously demonstrated on wastes or surrogates with less than 260 ppm total mercury concentration.

Mercury Separation

A mercury separation technology may be included in the demonstration tests. A candidate process uses a potassium iodide/iodine leaching solution to solubilize and remove mercury. The mercury is recovered as elemental mercury and amalgamated for disposal. The extractants are recovered and recycled. This process has already been demonstrated for mercury levels below 260 ppm.

Mercury Retort and Amalgamation

For comparison with the results of the advanced separation and stabilization technologies, an additional feasibility study will be performed using a mobile commercial vacuum retort unit to thermally desorb mercury. The recovered mercury will be amalgamated for disposal. This will be the baseline technology to satisfy the existing LDR treatment standard (RMERC) for High Mercury Inorganic Subcategory waste and the amalgamation (AMALG) treatment standard for radioactive elemental mercury waste. Amalgamation will be by commercially available processes or by an advanced sulfur-polymer-cement process developed and used at BNL.