



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 9, 2023, at 1:30 pm at the Utah Department of Environmental Quality, (Multi-Agency State Office Building) Conference Room #1015, 195 North 1950 West, SLC.

Board members and interested persons may participate electronically/telephonically.

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

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AGENDA

- I. Call to Order and Roll Call.
- II. Public Comments on Agenda Items.
- III. Declarations of Conflict of Interest.
- IV. Approval of the meeting minutes for the January 12, 2023 Board meeting ..... Tab 1  
**(Board Action Item).**
- V. Petroleum Storage Tanks Update..... Tab 2
- VI. Petroleum Storage Tank Rules..... Tab 3
  - A. Approval of proposed changes to Petroleum Storage Tank Rules R311-200, 202, and 206 for initial publication and 30-day public comment period **(Board Action Item).**
- VII. Administrative Rules ..... Tab 4
  - A. Approval to proceed with formal rulemaking and public comment on proposed changes to Radiation Control Rules UAC R313-16-230 to amend the process to apply for a registration of radiation machines to include an option for an electronic form as well as a paper form **(Board Action Item).**
- VIII. Low-Level Radioactive Waste..... Tab 5
  - A. EnergySolutions request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to treat waste containing hazardous contaminants and Polychlorinated Biphenyls (PCBs) (Information Item Only).

(Over)

IX. Director's Report.

X. Other Business.

A. Miscellaneous Information Items.

B. Scheduling of next Board meeting (March 9, 2023).

XI. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Larene Wyss, Office of Human Resources at (801) 503-5618, Telecommunications Relay Service 711, or by email at "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 12, 2023  
1:30 p.m.

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

**Board Members Participating Virtually:** Richard Codell, Danielle Endres, Steve McIff, and Nathan Rich

**Board Members Absent/Excused:** None.

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

Brent Everett, Doug Hansen, Morgan Atkinson, Eric Baiden, Tom Ball, Therron Blatter, Avery Holyoak, Jalynn Knudsen, Arlene Lovato, Stevie Norcross, Mike Pecorelli, Elisa Smith, Paige Walton

**Others Attending at Anchor Location:** None.

**Other UDEQ employees and interested members of the 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 recused himself from voting on agenda item VIII. Hazardous Waste Section - (A. Approval of Proposed amendment to Stipulation and Consent Order No. 2106050 between the Board and Clean Harbors Aragonite, LLC.)

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

**It was moved by Mark Franc and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the November 10, 2022 Board meeting minutes.**

**V. Petroleum Storage Tanks Update.**

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the preliminary estimate of the cash balance of the Petroleum Storage Tank (PST) Fund for the end of December 2022, is \$28,445,991.00. The actual cash balance of the PST Fund at the end of November 2022, was \$28,252,400.00. As of November, the negative equity balance of the PST Fund has been eliminated as projected by the actuary over the last several years. The PST Fund is now structurally sound. The DERR will continue to watch the balance of the PST Fund closely to ensure sufficient cash is available to cover qualified claims for releases especially as aboveground petroleum storage tanks (APSTs) begin regulation and can obtain PST Fund coverage. Mr. Riding recognized the efforts taken to bring the PST Fund into a good financial position.

Mr. Everett informed the Board that the quarterly PST Advisory Task Force meeting was held January 11, 2023. One of the items discussed in the meeting is that every two years, according to rule, the DERR looks at personnel costs for the PST Fund usage for consultants. The current reimbursement rates are estimated to increase approximately 10% based on the consumer price index.

Mr. Everett informed the Board that the DERR is unaware of any legislation that would affect the DERR at this time.

## **VI. Petroleum Storage Tanks Rules.**

### **A. Proposed changes to R311-200, 202, and 206 of the Petroleum Storage Tank rules (Information Item)**

Morgan Atkinson, Section Manager of the PST Release Prevention and Compliance Section of the DERR, informed the Board that the DERR will be proposing changes to R311, Petroleum Storage Tank Rules. This is an informational item. The DERR will bring this item before the Board again in the near future to request approval for public comment.

The rules to be amended are R311-200 Petroleum Storage Tanks: Definitions; R311-202 Federal Underground Storage Tank Regulations; and R311-206 Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms. The changes will include defining what an APST is, setting a dollar amount for the financial responsibility requirement, and establishing requirements and processes for APST release reporting, investigation, confirmation, response, and corrective action.

Because Senate Bill 40 (SB-40) requires all APSTs to meet financial responsibility requirements and obtain a certificate of compliance by July 1, 2023, addressing these issues requires immediate attention in order to have the updated rule in place before the July 1st deadline.

Danielle Endres asked for additional information regarding tanks that would be exempt from regulation by the proposed definition of an APST. Mr. Atkinson informed her that when SB-40 was passed, discussions revolved around petroleum storage tanks over 501 gallons. There are tanks that meet the current definition of an APST that were not intended to be regulated. These APSTs include tanks that are already regulated by other agencies, store non-liquid fuels, are part of an exempt group but were not specifically defined, or are not in use. Ms. Endres asked if all excluded tanks are regulated. Mr. Atkinson informed her that many of these APSTs are regulated by other agencies and the DERR does not wish to enforce dual regulation. He also noted that if there are excluded tanks that are not regulated by another agency, they would be responsible for any environmental impacts under the Water Quality Act.

Mr. Riding inquired about including changes to technical performance standards. Mr. Atkinson said that industry regulations already exist for testing. He stated that at this point the DERR is focusing on the financial and reporting requirements and may come before the Board again if additional changes are needed.

## VII. Administrative Rules.

- A. Approval to proceed with formal rulemaking and 30-day public comment period on a change to proposed rule changes to Utah Administrative Code R315-101 of the Hazardous Waste Rules amending the rule to include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments based on EPA guidance. The proposed rule was originally published for public comment in November of 2021 and then again in October of 2022. Based on comments received during the comment period in October changes have been made to the proposed rule (Board Action Item).**

Tom Ball, Planning and Technical Support Section Manager in the Division of Waste Management and Radiation Control, reviewed the request for the Board's approval to proceed with formal rulemaking and 30-day public comment period on a change to proposed rule to Utah Administrative Code R315-101 of the Hazardous Waste Rules.

Mr. Ball stated that this is the third time that the amended Rule UAC R315-101 has been presented to the Board. The rule was originally published for public comment in November of 2021, and then again in October of 2022. Mr. Ball explained this time the difference is the Division is requesting what is termed as a "change to proposed rule". Specifically, when proposed rule is published in the *Utah State Bulletin*, an agency has 120 days from the date of publication to set an effective date for that rule. If the 120 days passes without an effective date being set, the rule making is abandoned and the agency must start the process again. If an agency determines that changes need to be made to a proposed rule and they are able to file the changes within the 120-day window, they can file a change to proposed rule where only the changes being made are considered open for public comment, and the remainder of the rule is not open for public comment, just the new changes only. When that is published in the *Utah State Bulletin*, it opens up a new 120-day window to set an effective date for those changes to the proposed rule.

After responding to comments and working with stakeholders from the November 2021 publishing of the rule, the 120-day window had already lapsed for the Division to conduct a change in the proposed rule. Hence, in October of 2022 a new rulemaking process was started.

This time the Division has received comments from the October publishing of the proposed rule and the Division has made changes to the rule, but because the 120-day window does not close until January 28, 2023, the change to proposed rule process is being filed.

Mr. Ball reviewed the proposed changes that included: (1.) To allow flexibility in determining the exposure point concentration, R315-101-5(f)(4)(iii) has been amended to provide additional clarity; (2.) the word "inhalation" has been removed from R315-101-5(j)(10)(ii)(B); (3.) the definition of "Adverse Effect" found in R315-101-13(e) has been revised to add "or humans," and reference contaminants of concern; (4.) R315-101-7(j) has been amended to include "vapor barriers" in the list of example engineering controls; (5) the definition of "Cleanup" found in R315-101-13(l) has been revised to include monitored natural attenuation; and (6.) formatting, typographical, and grammatical errors have been corrected.

This is the Board action item and the Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the February 1, 2023 *Utah State Bulletin* a change to proposed Rule UAC R315-101 and conducting a 30-day public comment period from February 1 to March 3, 2023.

Dr. Codell questioned if the proposed changes are in compliance with the federal EPA regulations, and asked if the Division anticipates receiving additional comments?

Mr. Ball stated that there is always the potential to receive additional comments. However, this is the third-round of receiving public comments and the Division has only received one entity comments and has already responding to those comments in writing and has made the necessary changes to the rule in response to those comments. Therefore, he feels the staff have conducted their due diligence in this matter and is hopeful this time all issues have been resolved and staff will not have to address any additional public comments.

Dr. Codell asked if there was a clear and unambiguous definition of Cumulative Risk, as it was not listed in the list of definitions and requested clarification on this matter.

Paige Walton, Corrective Action Section Manager in the Division of Waste Management and Radiation Control, provided additional information regarding the risk range vs. actual range numerical values.

Dr. Codell clarified that he was not interested in the numerical values, he is specifically interested in the definition of what a cumulative risk is and gave an example.

Ms. Walton stated that Dr. Codell's example is correct, and further stated to define that staff looks at the risk range and the conceptual model. First looked at are the impacted media of concern, which can change from site to site, which may mean looking at surface soils, subsurface soil, groundwater, surface water, or biota or air. Also looked at is the completed exposure pathways as there can be multiple receptors appropriate for the site. As you may have residential, industrial, construction, trespasser, recreational, and native use. So, it is not set that every receptor is looked at for every site. You need to look at a reasonable exposure to the defined receptors for which there is a completed exposure pathway, then cumulative risk is completed. That gets complicated because you have to define your constituents of potential concern for each of these exposure pathways, and then have an exposure point concentration, that represents the media concentrations. So, the risk and what is acceptable is a culmination of all these factors that go into the calculation and then presented as that risk range.

Dr. Codell thanked Ms. Walton for her explanation, but stated that in regard to this definition, it is a very hard concept to grasp for people who are not really familiar with it and recommended having some sort of a definition that spells out some of those points in the document would be useful, but he does not want to delay the rule further, this is just a concern he wanted to express.

Ms. Walton stated she understood his comments and concerns and agreed a risk assessment can be quite complicated and may not be as transparent for people that are not toxicologists or risk assessors. Ms. Walton also stated that Division staff have gone through all the definitions in the rule to make sure they were consistent with EPA definitions.

**It was moved by Danielle Endres and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve proceeding with formal rulemaking by publishing in the February 1, 2023 edition of the *Utah State Bulletin* and conducting a 30-day public comment period beginning February 1 to March 31, 2023 on the proposed rule changes to Utah Administrative Code R315-101 of the Hazardous Waste Rules.**

**B. Final adoption of proposed rule changes to Utah Administrative Code R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, and R315-265 of the hazardous waste rules in response to comments from U.S. EPA, Region 8 (Board Action Item).**

Tom Ball reviewed the request for the Board's approval to proceed with final adoption of proposed rule changes to Utah Administrative Code R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, and R315-265 of the hazardous waste rules in response to comments from U.S. EPA, Region 8.

At the Board meeting on November 10, 2022, the Board approved the proposed changes to UAC R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, and R315-265 to be filed with the Office of Administrative Rules for publication in the *Utah State Bulletin*. The proposed rule changes were published in the December 1, 2022, issue of the *Utah State Bulletin*.

The public comment period for this rulemaking ended on January 3, 2023. No comments were received. This is a Board action item and the Director recommends the Board approve final adoption of the changes to UAC R315-15, -260, -261, -262, -263, -264, and -265 as published in the December 1, 2022, issue of the *Utah State Bulletin* and set an effective date of January 17, 2023.

No questions were asked regarding this matter.

**It was moved by Scott Wardle and seconded by Mark Franc and UNANIMOUSLY CARRIED to approve for final adoption the proposed rule changes to Utah Administrative Code R315-15, R315-260, R315-261, R315-262, R315-263, R315-264, and R315-265 of the hazardous waste rules in response to comments from U.S. EPA, Region 8 as published in the December 1, 2022, issue of the *Utah State Bulletin* and set an effective date of January 17 2023.**

**C. Final adoption of proposed rule changes to Utah Administrative Code R313-15-501, R313-34-3, R313-35-120, R313-36-3 and R313-38-3, to incorporate federal regulatory changes made by the NRC to the federal radioactive materials regulations in 2020 (Board Action Item).**

Tom Ball reviewed the request for the Board's approval to proceed with final adoption of proposed rule changes to Utah Administrative Code R313-15-501, R313-34-3, R313-35-120, R313-36-3 and R313-38-3, to incorporate federal regulatory changes made by the NRC to the federal radioactive materials regulations in 2020.

At the Board meeting on November 10, 2022, the Board approved the proposed changes to UAC R313-15-501, R313-34-3, R313-35-120, R313-36-3 and R313-38-3 to be filed with the Office of Administrative Rules for publication in the *Utah State Bulletin*. The proposed changes were published in the December 1, 2022, issue of the *Utah State Bulletin*.

The public comment period for this rulemaking ended on January 3, 2023. No comments were received. This is a Board action item and the Director recommends the Board approve final adoption of the changes to UAC R313-15-501, R313-34-3, R313-35-120, R313-36-3 and R313-38-3 as published in the December 1, 2022, issue of the *Utah State Bulletin* and set an effective date of January 17, 2023.

No questions were asked regarding this matter.

**It was moved by Vern Rogers and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve for final adoption the proposed rule changes to Utah Administrative Code R313-15-501, R313-34-3, R313-35-120, R313-36-3 and R313-38-3, to incorporate federal regulatory changes made by the NRC to the federal radioactive materials regulations in 2020 as published in the December 1, 2022, issue of the *Utah State Bulletin* and set an effective date of January 17, 2023.**

**D. Final adoption of proposed rule changes to Utah Administrative Code R313-28-31 to amend the requirement for gonadal shielding (GS) during abdominal and pelvic radiography (Board Action Item).**

Tom Ball reviewed the request for the Board's approval to proceed with final adoption of proposed rule changes to Utah Administrative Code R313-28-31 to amend the requirement for gonadal shielding (GS) during abdominal and pelvic radiography.

At the Board meeting on November 10, 2022, the Board approved the proposed changes to UAC R313-28-31 to be filed with the Office of Administrative Rules for publication in the *Utah State Bulletin*. The proposed changes were published in the December 1, 2022, issue of the *Utah State Bulletin*.

The public comment period for this rulemaking ended on January 3, 2023. No comments were received. The Director recommends the Board approve final adoption of the changes to UAC R313-28-31 as published in the December 1, 2022, issue of the *Utah State Bulletin* and set an effective date of January 17, 2022.

No questions were asked regarding this matter.

**It was moved Dennis Riding and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve for final adoption the proposed rule changes to Utah Administrative Code R313-28-31 to amend the requirement for gonadal shielding (GS) during abdominal and pelvic radiography as published in the December 1, 2022, issue of the *Utah State Bulletin* and set an effective date of January 17, 2023.**

**VIII. Hazardous Waste Section.**

**A. Approval of Proposed amendment to Stipulation and Consent Order No. 2106050 between the Board and Clean Harbors Aragonite, LLC issued on February 8, 2022 (Board Action Item).**

Stevie Norcross, Assistant Director in the Division of Waste Management and Radiation Control, reviewed the Board's approval of Proposed amendments to Stipulation and Consent Order (SCO) No. 2106050 between the Board and Clean Harbors Aragonite, LLC (CHA) issued on February 8, 2022.

Specifically, the proposed amendment to SCO 2106050 provides for a one-year extension to the deadline by which CHA must complete the Supplemental Environmental Project (SEP) that was spelled out in the SCO.

This matter was presented as an information item in the Board's November meeting. The SCO included a penalty of \$42,806.00 to resolve Notice of Violation Number 2102003.



The SCO was presented and approved by the Board during the January 13, 2022 meeting. In the SCO, half of the penalty was to be credited toward a SEP wherein CHA transports and disposes of confiscated electronic cigarette devices or vaping devices from schools in Utah.

Dr. Norcross explained that \$21,403 dollars of the penalty may be substituted, if in return CHA completed the SEP. Dr. Norcross explained that SEPs are intended to provide an environmental benefit while maintaining deterrent objectives of the penalty. If CHA completes the SEP, they will receive 50¢ penalty credit for every SEP dollar spent. So, effectively it would provide \$42,806 worth of work toward vape collection and disposal for Utah schools, if completed.

To date, CHA has spent approximately \$17,000 worth of work towards this SEP. The original SEP is set to expire February 8, 2023. However, CHA still has money available for the schools to utilize. CHA has requested a one-year extension so they could continue the program for another school year.

The Amendment to the SCO went out for a 30-day public comment period. No comments were received. The Director recommends approval of the Proposed Amendment to the SEP included in the SCO No. 2106050.

Nathan Rich asked, if the SEP is not completed before the expiration date, is CHA required to pay the balance due as a fine directly back to the State of Utah?

Dr. Norcross stated yes. CHA will have to pay that outstanding balance back to the state of Utah and the monies will be deposited in the State's general fund account.

Mr. Rich asked if all other matters within the original SCO have been completed and this extension will not impact anything else in the original SCO.

Dr. Norcross stated yes. This matter before the Board is strictly to extend the SCO for a one-year period so that CHA can complete the SEP.

Danielle Endres commented that she has learned so much regarding this matter and mentioned the Board's presentation on this matter in November. Ms. Endres stated prior to that she had no idea about this matter and wondered when this SCO is over, what mechanisms will the UDEQ be using to continue a program like this or will this option just stop and Utah schools will have to find a different way to get vape items collected and disposed of?

Dr. Norcross informed the Board that currently the UDEQ does not have any plan outside of this SEP to continue a mechanism in supporting the schools with vape disposal. However, quite a few steps have been taken to hopefully prepare them for that transition. Dr. Norcross reiterated from the last Board meeting, that there are some school districts that are already getting their e-cigarette waste collected or picked up directly by a permitted treatment storage and disposal facility. Also, to help in this endeavor, the Division has provided booklets to all of the high schools, middle schools, junior high and K through 12 schools in the State of Utah. The booklet describes the regulations and requirements around e-cigarette disposal and what schools need to do to ensure that they are in line with those requirements. In addition, Division staff have communicated with the local health departments, as well as the State Board of Education and have laid out their options moving forward to dispose of e-cigarettes properly, to ensure they are in-line with the rules and regulations. Also, examples included the information that some landfills permitted to receive very small quantity generator hazardous waste can receive the e-cigarette waste. So, if the schools are able to collect that waste, they can actually drop it off at that landfill. However, schools will need to communicate with landfills in their region, because although the landfill is permitted to receive that waste, that does not necessarily mean the landfill will accept this type of waste. Other issues address fiscal or financial impacts. If schools have treatment, storage and disposal facilities pick up the waste directly from the

schools, it may have a significant financial impact. Schools have been informed that if they consolidate the waste at a central location, like the school district, that is going to be a more cost-effective solution. So, all these options have been addressed with the schools and they are aware of that. Currently, some school districts are already starting to figure that out, but it is anticipated that this is going to be an ongoing process that we are here to assist with. Moving forward, the Division is not going to be directly coordinating that work with the schools.

Director Hansen reminded the Board that the impetus for this action was a statute change that was passed for schools (2020 H.B. 58) as UDEQ does not usually deal with these types of matter. Director Hansen stated that he recognizes that there may be some challenges and some problems with implementing the regulations and Dr. Norcross and Division staff have been working to solve a problem that has been inherited through this legislation and the Division will continue to look for opportunities to be part of solutions. In this case, the Division saw this as an opportunity when it came up and implemented the SEP, as anytime you can leverage 50 cents on a dollar to accomplish a service for Utah schools, it benefits everybody. So, the Division will look for opportunities to assist, but this is not something the Division can assist with on a routine basis.

**It was moved by Nathan Rich and seconded by Scott Wardle and UNANIMOUSLY CARRIED to approve the proposed amendment to Stipulation and Consent Order No. 2106050 between the Board and Clean Harbors Aragonite, LLC issued on February 8, 2022. (Shane Whitney abstained from voting.)**

#### **IX. Director's Report.**

Director Hansen reminded the Board that the 2023 Legislative Session will begin next week. Director Hansen reported that there are already over a thousand bills in the offering for this legislative session and anticipates that there will be some that have a touch point with the Division as well as some of the industries and constituencies Board members represent. Director Hansen informed the Board that he is currently aware of two legislative bills that may impact the Division.

The first bill deals with radon and reporting results of radon testing. Currently, the radon results of testing from contractors are reported through the UDEQ webpage. The staff member that manages the radon program for UDEQ is housed in the Executive Director's office. This bill would potentially move that position to the Division and develop an online radon gas test data collection mechanism and map, addresses testing and mitigation in public buildings, including reporting, and repeals the study requirement that have been completed. Director Hansen stated this proposed legislation was presented to an interim committee a few months ago, so the Division has been aware of the possibility of managing the radon program for the State of Utah.

The second bill has to do with the Waste Tire Fund, HB 110. Director Hansen informed the Board that legislation was passed at the end of the 2022 Legislative Session and the proposed legislation appears to potentially be reversing it. This bill repeals provisions related to certain municipal solid waste landfill deposits. Specifically, by repealing Section 19-6-808.5, the bill would no longer require municipal solid waste landfills to deposit money into the Waste Tire Recycling Fund and would prevent counties from receiving any money from the fund.

Director Hansen stated that as he is apprised of potential legislation, he will share that information with the Board.

Director Hansen informed the Board that there are six board members whose terms are set to expire this year. Director Hansen stated that staff will reach out to each of them individually and instruct

them of the process of reapplying. Director Hansen also asked if Board members are no longer interested in serving if they could let him know at their earliest convenience.

## **X. Other Business.**

### **A. Miscellaneous Information Items.**

Kim Shelley, Executive Director of UDEQ, reported that yesterday the Governor convened his cabinet along with his senior advisors to rally around the upcoming legislative session. That includes his budget, which she anticipates will be really impactful, not only for individual and families, but also for state employees and their compensation.

Executive Director Shelley stated that out of the 1,000 potential legislative bills, about 1/3 of them are anticipated to be water focused.

Executive Director Shelley informed the Board that during the recent Governor's cabinet meeting, she got the opportunity to meet Arthur Brooks. Mr. Brooks is a Harvard professor and bestselling author. Professor Brooks is changing the way we view happiness and its impacts on organizations. Governor Cox has embraced Professor Brooks' ideas around what makes a happy community and a happy state. Executive Director Shelley commented that during her conversation with Professor Brooks, something she thought that impacts this Board is one of the four pillars to happiness: having work that is meaningful and serves others. Specifically, if you find meaning in your work and know that your work is impactful to your community, that provides a level satisfaction. Director Shelley thanked the Board for their work in serving others.

Executive Director Shelley reported that the Governor's State of the State Address will be on January 19, 2023 at 6 pm. The Governor will touch on some of those items she mentioned above. Governor Cox will also be conducting the meeting a little differently as he has uninvited his cabinet to attend the event, and instead he has invited the children and grandchildren of legislators to attend. Executive Director Shelley anticipates it to be an exciting event and is hopeful all will tune in.

### **B. Scheduling of next Board meeting (February 9, 2023).**

The next meeting is scheduled for February 9, 2023 at the Utah Department of Environmental Quality, Multi-Agency State Office Building.

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

## **XI. Adjourn**

The meeting adjourned at 2:22 p.m.

**PST STATISTICAL SUMMARY**  
**January 1, 2022 -- December 31, 2022**

PROGRAM													
	January	February	March	April	May	June	July	August	September	October	November	December	(+/-) OR Total
<b>Regulated Tanks</b>	4,132	4,150	4,157	4,178	4,176	4,182	4,178	4,188	4,184	4,191	4,190	4,196	<b>64</b>
<b>Tanks with Certificate of Compliance</b>	4,048	4,059	4,061	4,057	4,057	4,071	4,061	4,065	4,072	4,073	4,085	4,083	<b>35</b>
<b>Tanks without COC</b>	84	91	96	121	119	111	117	123	112	118	105	113	<b>29</b>
<b>Cumulative Facilities with Registered A Operators</b>	1,287	1,285	1,284	1,288	1,286	1,286	1,288	1,285	1,279	1,278	1,276	1,282	<b>98.31%</b>
<b>Cumulative Facilities with Registered B Operators</b>	1,288	1,285	1,285	1,289	1,287	1,287	1,289	1,287	1,280	1,279	1,277	1,282	<b>98.31%</b>
<b>New LUST Sites</b>	10	12	9	7	6	7	9	11	5	10	8	9	<b>103</b>
<b>Closed LUST Sites</b>	2	13	13	14	13	9	2	12	7	3	14	3	<b>105</b>
<b>Cumulative Closed LUST Sites</b>	5405	5419	5431	5447	5454	5455	5463	5474	5474	5491	5494	5501	<b>96</b>
FINANCIAL													
	January	February	March	April	May	June	July	August	September	October	November	December	(+/-)
<b>Tanks on PST Fund</b>	2,629	2,631	2,628	2,619	2,609	2,613	2,651	2,655	2,645	2,636	2,635	2,628	<b>(1)</b>
<b>PST Claims (Cumulative)</b>	703	704	705	706	705	710	710	711	711	711	711	711	<b>8</b>
<b>Equity Balance</b>	-\$2,363,604	-\$1,761,847	-\$1,826,879	-\$1,634,540	-\$986,270	-\$639,953	-\$646,753	-\$295,722	-\$127,174	-\$281,835	\$80,750	\$274,341	<b>\$2,637,945</b>
<b>Cash Balance</b>	\$25,033,924	\$25,635,681	\$25,570,649	\$25,762,988	\$26,411,258	\$26,757,575	\$26,750,775	\$27,693,250	\$27,524,702	\$27,889,815	\$28,252,400	\$28,445,991	<b>\$3,412,067</b>
<b>Loans</b>	0	0	0	0	1	0	0	1	5	0	0	0	<b>0</b>
<b>Cumulative Loans</b>	121	121	121	121	122	122	122	123	128	128	128	128	<b>7</b>
<b>Cumulative Amount</b>	\$4,738,367	\$4,738,367	\$4,738,367	\$4,738,367	\$4,740,989	\$4,740,989	\$4,740,989	\$5,040,989	\$6,014,420	\$6,014,420	\$6,014,420	\$6,014,420	<b>\$1,276,053</b>
<b>Defaults/Amount</b>	0	0	0	0	0	0	0	1	0	0	0	0	<b>0</b>
	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
<b>Speed Memos</b>	41	50	76	59	78	65	32	47	77	105	60	31	<b>721</b>
<b>Compliance Letters</b>	11	18	16	15	9	6	8	8	7	7	9	9	<b>123</b>
<b>Notice of Intent to Revoke</b>	1	0	2	0	0	0	0	0	0	0	0	0	<b>3</b>
<b>Orders</b>	1	0	2	2	0	0	0	0	0	0	0	qq	<b>5</b>

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

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

**Background:**

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

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

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

**The rules to be amended are:**

R311-200 Petroleum Storage Tanks: Definitions.

R311-202 Federal Underground Storage Tank Regulations.

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

The proposed changes were presented to the Board in January as an information item. They were also presented to the PST Advisory Task Force and emailed out to all PST program stakeholders for informal comment, with no comments being received. In preparation for filing, the draft rule package was submitted to the Division of Administrative Rule for pre-filing review. We received a few suggested edits to both the existing rule and proposed changes. These edits were primarily formatting and word usage recommendations that make the rules compliant with the Administrative Rules rule writing guidance. The edits were reviewed and some were added to the proposed rule that is now before the Board. The most

significant edit was updating the name of the Department of Health to the Department of Health and Human Services to reflect that recent change to state agency structure.

A summary of the proposed changes is below. Also included in the board packet are the rule templates, including required analysis and the text of the changes. In the rule text document, wording to be added is underlined, and wording to be removed is ~~struck-out~~. A pdf containing the entire text of the proposed changes can be found [on the DERR Website](#).

This matter is a Board action item. The Director recommends Board approval to proceed with initial publication and 30-day public comment period.

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

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

- R311-200-1(2)(a)(iii)(A). Removed some language from the statute definition of an APST that is not applicable in the rule language.
- R311-200-1(2)(a)(iii)(D). Clarified this exclusion to include oil and gas transmission operations.
- R311-200-1(2)(a)(iii)(F). Added exclusion for oil filled electrical equipment such as transformers.
- R311-200-1(2)(a)(iii)(G). Added exclusion for ASTs that are used at a site on a temporary basis.
- R311-200-1(2)(a)(iii)(H). Added exclusion for used oil tanks managed under WMRC's Used Oil recycling program.
- R311-200-1(2)(a)(iii)(I). Added exclusion for airport hydrant fueling systems at military facilities. This is similar to the commercial airport exemption in R311-200-1(2)(a)(iii)(E).
- R311-200-1(2)(a)(iii)(J). Added exclusion for ASTs containing a de minimis concentration of petroleum
- R311-200-1(2)(a)(iii)(K). Added exclusion for ASTs used to store liquefied petroleum gases such as propane
- R311-200-1(2)(a)(iii)(L). Added exclusion for aboveground hot-oil tanks used to store petroleum products that will be manufactured into asphalt paving material
- R311-200-1(2)(h): Changed "Utah Department of Health" to "Utah Department of Health and Human Services"
- R311-200-1(2)(ll): Changed "adopted by Rule R311-202" to "incorporated by Rule R311-202"

#### **R311-202 Federal Underground Storage Tank Regulations**

- R311-202-1. Format and numbering updated to match current Division of Administrative Rules requirements.
- R311-202-1(2) Establishes 40 CFR 280 Subparts E, F, and H as the APST requirements and standards for release reporting, investigation, and confirmation; release response and corrective action; and financial responsibility respectively.

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

- R311-206-2(1)(b). Sets the financial assurance coverage amounts for APSTs to be the same required for USTs in 40 CFR 280.93.
- R311-206-3(1)(e). Clarify that the financial assurance needed to qualify for a certificate of compliance is either participation in the Environmental Assurance Program or another mechanism allowed by the rule.

The tentative adoption schedule for the proposed rule changes is:

Request for comments from PST Stakeholders	December 2022 and January 2023
Request for Board approval for publication and public comment	February 9, 2023
Publication in the Utah State Bulletin	March 1, 2023
Public comment period	March 1 – March 30, 2023
Public hearing (date tentative)	March 13, 2023
Board approval for final adoption	April 13, 2023
Final effective date of new rules	April 14, 2023

**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2022

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Rule or Section Number:</b>	<b>R311-200</b>	<b>Filing ID: Office Use Only</b>

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room number:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R311-200. Petroleum Storage Tanks: Definitions
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Refining the definition in statute to meet the intent of SB-40. This will exempt specific AST systems that had not been considered when the statute was proposed.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
R311-200-1(2)(a)(iii)(A): Removed a redundancy from rule that is appropriate in statute but not in rule. Added exceptions to the definition of an APST.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state government revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impact on local government revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impact to small business revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
This rule change is not expected to have any fiscal impact to non-small business revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.



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

This rule change is not expected to have any fiscal impact on other persons revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.

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

No compliance costs are anticipated to affected parties because these AST systems are currently exempt and will remain exempt from regulations.

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

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

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

No fiscal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality

**Citation Information**

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

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

**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

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

<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

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

<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**Public Notice Information**

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

**A) Comments will be accepted until:** 03/31/2023

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

<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
03/13/2023	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

**9. This rule change MAY become effective on:** 06/29/2023

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

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee and title:</b>	Brent Everett, Director	<b>Date:</b>	02/09/2023
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-200. Petroleum Storage Tanks: Definitions.**

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

- (1) Terms used in this rule are defined in Section 19-6-402.
  - (2) In addition, for purposes of this rule:
    - (a) Aboveground petroleum storage tank" or "APST" means a storage tank that is, by volume, less than 10 % buried in the ground, including the pipes connected to the storage tank and:
      - (i) has attached underground piping; or
      - (ii) rests directly on the ground;
        - (A) contains regulated substances;
        - (B) has the capacity to hold 501 gallons or more; and
      - (iii) is not:
        - (A) used in agricultural operations [~~as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
        - (B) used for heating oil for consumptive use on the premises where stored;
        - (C) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
        - (D) directly related to oil or gas production, [~~and~~] gathering and transmission operations; [~~or~~]
        - (E) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102.
        - (F) oil filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors;
        - (G) a stationary aboveground storage tank that is installed, rendered immobile, and intended for use on a property for no more than 180 consecutive days;
        - (H) an used oil collection tank regulated under Section 19-6-710;
        - (I) an airport hydrant fuel distribution system at a military facility;
        - (J) any AST that contains a de minimis concentration of regulated substances;
        - (K) an AST used to store liquefied petroleum gases that are not liquid at standard temperature and pressure; or
        - (L) an aboveground hot-oil tank or container that is used to store petroleum products that will be manufactured into asphalt paving material.
- (b) "Actively participated" for 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.

- (c) "Agricultural operation" means any operation on a tract of land devoted to the production of crops, animals, or fowl; fruit or vegetable products; or the production of dairy, nuts, tobacco, nursery, or floral products.
- (d) "As-built drawing" for notification means a drawing to scale of newly constructed PSTs. The PSTs shall be referenced to buildings, streets, and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size must be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".
- (e) "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 PST system.
- (f) "Certificate" means a document that evidences certification.
- (g) "Certification" means approval by the director or the board to engage in the activity applied for by the individual.
- (h) "Certified environmental laboratory" means a laboratory certified by the Utah Department of Health and Human Services as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for PST sampling in Subsection R311-205-2(5).
- (i) "Certified sampler" is the person who performs environmental media sampling for compliance with Utah PST rules.
- (j) "Change-in-service" means the continued use of a [P] PST to store a non-regulated substance.
- (k) "Claimant" means any person eligible to submit requests for reimbursement of costs against the Petroleum Storage Tank Fund as determined by the director.
- (l) "Community water system" means a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- (m) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted to determine the extent and degree of contamination.
- (n) "Consultant" is a person who is a certified PST consultant according to Subsection 19-6-402(7) and Section R311-201-2.
- (o) "Cost Guidelines" refers to the Cost Guidelines for Utah Underground Storage Tank Sites document, dated June 3, 2021. This document contains personnel classifications, requirements, and rates, general tasks and responsibilities for personnel, maximum allowable equipment and laboratory rates, and specific items or activities that will and will not be reimbursed by the Petroleum Storage Tank Fund.
- (p) "Customary, reasonable, and legitimate expenses" means costs incurred during the investigation, abatement, and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.
- (q) "Customary, reasonable, and legitimate work" means work for investigation, abatement, and corrective action that shall reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and considering current or probable land use as determined by the director following the criteria in Rule R311-211.
- (r) "Department" means the Utah Department of Environmental Quality.
- (s) "EAP" means the Environmental Assurance Program established in Section 19-6-410.5.
- (t) "Eligible exempt UST" for eligibility for the Petroleum Storage Tank Fund means a tank specified in Subsection 19-6-415(1).
- (u) "Environmental media sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for evaluating environmental contamination.
- (v) "EPA" means the United States Environmental Protection Agency.
- (w) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the director.
- (x) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.
- (y) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of a PST.
- (z) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.
- (aa) "Historic contamination" as referenced in Subsections 19-6-428(3)(c) and 19-6-428(3)(d) is petroleum contamination:
- (i) reported after the start of continuous participation in the EAP that has no apparent cause or source and for which the director reasonably determines to have occurred during a period of non-participation; or
  - (ii) a release which does not meet the definition of a new release.
- (bb) "Injury or damage from a release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in Subsection R311-211-6(1).
- (cc) "In service" means an PST that is actively storing or dispensing regulated substances.
- (dd) "In use" means that an operational, inactive, or abandoned PST contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to the safety of human health or the environment, as determined by the director.
- (ee) "Lapse" in reference to the certificate of compliance and coverage under the EAP, means to terminate automatically.
- (ff) "Native soil" means any soil that is not backfill material, is naturally occurring, and is most representative of the localized subsurface lithology and geology.
- (gg) "New release" as referenced in Subsections 19-6-428(3)(c) and 19-6-428(3)(d) are releases that occur on or after the start date for continuous participation in the EAP, which the director reasonably determines to have occurred due to an unusual operating condition, an apparent PST system equipment failure, a failed PST test, an overfill, or a surface spill during the time of program participation.
- (hh) "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.
- (ii) "Occurrence" in reference to Section R311-208-4 means a separate petroleum fuel delivery to a single tank.
  - (jj) "Owners and operators" means either an owner or operator, or both owner and operator.
  - (kk) "Over-excavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the PST or take environmental media samples during PST closure activities as outlined in Section R311-205-2.
- (ll) "Permanently closed" means PSTs that are removed from service following guidelines in 40 CFR Part 280 Subpart G ~~adopted~~ incorporated by Rule R311-202.
- (mm) "Petroleum storage tank fee" means the fee which funds the Petroleum Storage Tank Fund as established in Section 19-6-409.
- (nn) "Petroleum Storage Tank Fund" means the Fund created by Section 19-6-409.

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

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

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

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

- (i) the integrity of the system;
- (ii) protection of the environment; and
- (iii) qualifying for a certificate of compliance.

(ss) "PST testing" means:

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

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

(uu) "Registration fee" means PST registration fee.

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

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

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

(yy) "Secondary containment"

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

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

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

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

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

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

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

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

and

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

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

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

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

(iii) "Suspected release" means a release that may have occurred from a regulated PST system, for example: petroleum contamination discovered at the PST site or in the surrounding area; unusual operating conditions of the PST system; release detection methods indicating a release

may have occurred; inventory control records indicating unexplained product loss; or, a spill or overfill that occurs outside secondary containment and exceeds 25 gallons.

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

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

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

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

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

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

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

(nnn) "UST installer" means an individual who engages in PST installation.

(ooo) "UST removal" means the removal or permanent closure of a PST system by taking out of service all or part of a PST system.

(ppp) "UST remover" means an individual who engages in PST tank removal.

(qqq) "UST tester" means an individual who engages in PST testing.

**KEY: petroleum, underground storage tanks**

**Date of Last Change: 2023[July 15, 2022]**

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

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

**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2022

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Rule or Section Number:	R311-202	Filing ID: Office Use Only

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room number:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R311-202. Federal Underground Storage Tank Regulations.
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Clarifying which Subparts of 40 CFR 280 the Division will use as the standards for APST release investigation, cleanup, and financial responsibility that were implemented by SB40 from the 2021 legislative session.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Format and numbering updated to match current Division of Administrative Rules requirements. Incorporates portions of the Federal Underground Storage Tank Regulations to be used as the standards for APST owners and operators to follow. APST owners and operators must meet the same standards for release reporting, investigation, confirmation, corrective action, and financial responsibility as UST owners and operators.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Any fiscal cost to state government was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.
<b>B) Local governments:</b>
Any fiscal cost to local government was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
Any fiscal cost to small businesses was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
Any fiscal cost to non-small businesses was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.

**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**):

Any fiscal cost to other persons was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.

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

Any compliance costs for affected persons was accounted for in the fiscal note attached to SB40 in the 2021 legislative general session.

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

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

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

No fiscal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality

**Citation Information**

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

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

**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

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

<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

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

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

<b>Issue Date</b>	
<b>Issue or Version</b>	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until:</b>		03/31/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
03/13/2023	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

<b>9. This rule change MAY become effective on:</b>	06/29/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
<b>Agency head or designee and title:</b>	Brent Everett, Director	<b>Date:</b>	02/09/2023

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

**R311-202. Federal Underground Storage Tank Regulations.**

**R311-202-1. Incorporation by Reference.**

(1) 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~~)a) 40 CFR 280 Subpart J is not incorporated by reference;

([2]~~2~~)b) 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]~~3~~)c) [~~F~~]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]~~4~~)d) [~~F~~]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.

(2) Owners or operators of APSTs must follow the requirements and standards as set forth in 40 CFR Part 280 Subparts E, F, and H.

(a) Any references in these Subparts to USTs, UST systems, UST owners or operators, UST excavation zones, UST program, UST release, or UST sites also apply to APSTs.

(b) Releases of hazardous substances, as referenced in 40 CFR 280.12, from ASTs are not subject to Subsection R-311-202-1(2)(a).

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

**Date of Last Change: 2023[January 1, 2017]**

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

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



**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2022

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Rule or Section Number:</b>	<b>R311-206</b>	<b>Filing ID: Office Use Only</b>

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Room number:</b>		
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	P.O Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Clarifying that APST owners or operators financial assurance amounts must meet the same amounts and scope defined in 40 CFR 280.93 for USTs. Specifically require owners or operators to declare on their application for a Certificate of Compliance whether they are participating in the EAP or demonstrate the FA meets the requirements in R311-206-2(1)(b) and Section R311-206-5.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
R311-206-2(1)(b). In response to SB40 from the 2021 legislative session, added FA for APST facilities must meet the same coverage amounts as USTs specified in 40 CFR 280.93. R311-206-3(1)(e). Added that owners or operators must declare on their application for a Certificate of Compliance that they are participating in the EAP or demonstrate their FA meets the requirements found in Subsection R311-206-2(1)(b) and Section R311-206-5.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impacts on state government revenues or expenditures because all state owned facilities with PSTs are required to participate in the Environmental Assurance Program.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impacts on local government revenues or expenditures because all proposed changes to the rule are clarifications of what was required by SB40 in the 2021 legislative session.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impacts on small business revenues or expenditures because all proposed changes to the rule are just clarifications of what was required by SB40 in the 2021 legislative session.

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

This rule change is not expected to have any fiscal impacts on non-small business revenues or expenditures because all proposed changes to the rule are just clarifications of what was required by SB40 in the 2021 legislative session.

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

This rule change is not expected to have any fiscal impacts on other persons revenues or expenditures because proposed changes to the rule are clarifications of what was required by SB40 in the 2021 legislative session.

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

No compliance costs are anticipated to affected parties because proposed changes to the rule are clarifications of what was required by SB40 in the 2021 legislative session.

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

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

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

No fiscal impacts on businesses are expected by this rule.

Kim Shelley, Executive Director of the Department of Environmental Quality

**Citation Information**

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

Section 19-6-105	Section 19-6-403	Section 19-6-428
Section 19-6-410.5		

**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

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

<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

<b>B) This rule adds, updates, or removes the following title of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; <i>if none, leave blank</i> ):	
<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
<b>A) Comments will be accepted until:</b>	03/31/2023	
<b>B) A public hearing (optional) will be held:</b>		
<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>
03/13/2023	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

<b>9. This rule change MAY become effective on:</b>	06/29/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>To the agency:</b> Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
<b>Agency head or designee and title:</b>	Brent Everett, Director	<b>Date:</b>	02/09/2023

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

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

**R311-206-1. Definitions.**

Definitions are found in Rule R311-200.

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

(1) To demonstrate financial assurance, as required by Section 19-6-412 and Subsection 19-6-407(2)(c), owners or operators of petroleum storage tanks must:

(a) declare they will participate in the EAP and meet the requirements for participation in the EAP under Sections 19-6-410.5, 19-6-428 and R311-206-4; or

(b) demonstrate financial assurance that meets the coverage amounts specified in 40 CFR 280.93, by an allowable method specified in Section R311-206-5.

(2) For the purposes of Subsection 19-6-412(6), 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 owner or operator must certify that the PST is in substantial compliance with state and federal statutes, rules, and regulations applicable to PST systems;

(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).

(c) the tank tightness test, as required by Section 19-6-413 conducted within six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual PST is not leaking;

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

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and participates in the EAP or demonstrates that the financial assurance that will be used meets the requirements of Subsection R311-206-2(1)(b) and Section R311-206-5~~[demonstrated the financial assurance mechanism that will be used]~~;

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

(g) the owner or operator has submitted an as-built drawing, for newly-installed systems, that meets the requirements of Subsection R311-200-1(2)(d) or a site plat, for existing systems, that meets the requirements of Subsection R311-200-1(2)(ccc); 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 PST facility throughput records.

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

(b) tank throughput records shall include 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) costs of an independent audit shall be paid by the owner or operator.

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

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

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

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

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

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

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

(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:

(a) before July 1, 2026, the owner or operator:

(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and

(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.

(b) on or after July 1, 2026, the owner or operator:

(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;

(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);

(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and

(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.

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

(1) Owners and operators who elect to utilize an alternate form of financial assurance must meet the minimum coverage amounts using one or a combination of mechanisms as outlined in 40 CFR 280.94.

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

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

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

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

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

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

- (i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.
- (ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).
- (c) if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the director, and an additional processing fee shall be paid in circumstances as determined by the director.
- (3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:
  - (a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.
  - (b) owners and 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 canceled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 280.97(b)(2)2.d. to the director as well as the insured.
    - (ii) the insurer must have a rating of A- or greater by A.M. Best Co.
  - (c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.
  - (d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.
  - (e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.
    - (i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.
    - (f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.
    - (g) guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.
    - (h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from the chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.
- (4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.
  - (a) information requested must be reported to the director within 30 calendar days after receiving the request.
  - (b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.
  - (c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.
  - (d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.
    - (i) audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.
    - (ii) auditing of financial assurance methods may be accomplished by any method approved by the director.
- (5) Any 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 Petroleum Storage Tanks and Eligible Exempt Aboveground Storage Tanks Containing Petroleum to the Environmental Assurance Program.**

- (1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the EAP by:
  - (a) performing a site check in accordance with Rule R311-205;
  - (b) meeting the requirements of Subsections 19-6-428(3)(a), 19-6-415(1) and R311-206-3(1);
  - (c) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and
  - (d) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.
- (2) Owners or operators of eligible exempt aboveground storage tanks containing petroleum may voluntarily participate in the EAP by
  - (a) performing a site check in accordance with Rule R311-205; and
  - (b) meeting the requirements of Subsections 19-6-415(2) and 19-6-428(3)(a), and Sections R311-206-3 and R311-206-4.

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

- (1) The director shall revoke a certificate of compliance or registration if the director determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.
- (2) A PST owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(1) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.
- (3) A PST owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Sections 19-6-412 and R311-206-3.
- (4) A PST 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 fees, interest, and penalties due to reinstate eligibility.
- (5) Upon permanent closure of a tank which is covered by the Petroleum Storage Tank Fund, the eligibility to make a claim against the Petroleum Storage Tank Fund will terminate as specified in Section R311-207-2.
  - (a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with the following requirements as outlined in 40 CFR 280:

- (a) release reporting;
- (b) abatement;
- (c) investigation;
- (d) corrective action; or
- (e) other measures to bring the release site under control.

**R311-206-8. Delivery Prohibition.**

(1) In accordance with Subsection 19-6-411(7) and 19-6-407(2)(d)(ii), the director shall authorize the placement of a delivery prohibition tag identifying a tank:

- (a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414;
- (b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5);
- (c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(1)(d); or
- (d) that is a new installation, and has not been issued a certificate of compliance.

(2) For USTs, 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 UST as soon as practicable after the determination is made that a tank does not have:

- (a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (b) overfill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or
- (d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) For APSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the APST as soon as practicable after the determination that the APST was not in service after May 5, 2021.

(4) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(5) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(5).

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

- (a) provide ballast for a new tank during installation, or
- (b) allow for the tank tightness test required under Section 19-6-413.

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

- (a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):
  - (i) a new certificate of compliance for the tank; and
  - (ii) written authorization to remove the delivery prohibition tag; or
- (b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):
  - (i) written authorization to remove the delivery prohibition tag.

(8) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(6)(a)(ii) or R311-206-8(6)(b)(i), the PST owner or operator is 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 PSTs who have voluntarily elected to participate in the EAP may cease participation in the EAP and be exempted from the requirements described in Section R311-206-4 by:

- (a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205; or
- (b) meeting the following requirements:
  - (i) demonstrating compliance with Section R311-206-5; and
  - (ii) notifying the director in writing at least 30 days before the date of cessation of participation in the EAP, and specifying the date of cessation.

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

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

(2) prorata refunds will not be given.

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

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

(4) For any facility that participates in the EAP and is sold to a company with facilities that do not participate in the EAP, the date of termination of coverage is the closing date for the real estate transaction.

- (a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

**R311-206-10. Participation in the Environmental Assurance Program After a Period of Non-participation.**

(1) Owners and operators not participating in the EAP must, before any subsequent participation in the EAP, meet the following requirements:

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

**R311-206-11. Environmental Assurance Fee Rebate.**

- (1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the EAP, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation," which is incorporated by reference.
- (a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.
- (2) The risk value for each facility participating in the EAP shall be:
- (a) calculated on a facility basis;
- (b) valid for the calendar year;
- (c) based on the facility characteristics as of December 15 of the prior calendar year; and
- (d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.
- (3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:
- (a) meet the requirements for secondary containment in 40 CFR 280.20; and
- (b) meet one of the following:
- (i) use an interstitial sensor and documentation of monthly interstitial monitoring; or
- (ii) documentation of monthly visual checks of a brine-filled interstitial space.
- (4) To qualify as secondarily contained for purposes of risk calculation, piping shall:
- (a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and
- (b) meet one of the following:
- (i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or
- (ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).
- (5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps, and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls.
- (6) Each facility that participates in the EAP may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table," dated June 2, 2014, which is incorporated by reference.
- (7) A facility that begins participation in the EAP after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the EAP.
- (8) The Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026 as per Subsections 19-6-410.5(5)(d) and 19-6-410.5(5)(e).

**KEY: petroleum, underground storage tanks**

**Date of Last Change: 2023~~September 27, 2022~~**

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

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428**

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD**  
**Executive Summary**  
**Public Comment -- Proposed Rule Changes**  
**UAC R313-16-230**  
February 9, 2023

<b>What is the issue before the Board?</b>	Approval from the Board to proceed with formal rulemaking and public comment on a proposed changes to UAC R313-16-230 to amend the process to apply for a registration of radiation machines to include an option for an electronic form as well as a paper form.
<b>What is the historical background or context for this issue?</b>	<p>Currently UAC R313-16-230 requires an application for registration of radiation machines to be submitted using a paper form number DWMRC-10.</p> <p>The Division has been working on systems to modernize and streamline our processes. A web-based portal has been created for the submission of applications for permits, licenses and registrations in electronic format.</p> <p>The current rule does not allow for an electronic submission of an application for registration of radiation machines. The proposed change to the rule will add applications submitted electronically through the division’s website as an option in addition to the form DWMRC-10.</p> <p>In addition to the proposed change detailed above the Division is correcting typographical and formatting errors found in the rules.</p> <p>A copy of the proposed changes to UAC R313-16-230 follow this Executive Summary.</p>
<b>What is the governing statutory or regulatory citation?</b>	<p>The Board is authorized under Subsections 19-3-103.1 and 19-3-104 to make rules that are necessary to implement the provision of the Radiation Control Act.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>
<b>Is Board action required?</b>	Yes. Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the <i>Utah State Bulletin</i> and conducting a public comment period.
<b>What is the Division Director’s recommendation?</b>	The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the March 1, 2023, <i>Utah State Bulletin</i> the proposed changes to UAC R313-16-230 and conducting a public comment period from March 1, 2023, to March 31, 2023.
<b>Where can more information be obtained?</b>	Please contact Tom Ball by email at <a href="mailto:tball@utah.gov">tball@utah.gov</a> or by phone at (801) 536-0251.



**State of Utah**  
**Administrative Rule Analysis**  
 Revised June 2022

NOTICE OF PROPOSED RULE		
<b>TYPE OF RULE:</b> New ___; Amendment <u>X</u> ; Repeal ___; Repeal and Reenact ___		
<b>Title No. - Rule No. - Section No.</b>		
<b>Rule or Section Number:</b>	<b>R313-16-230</b>	<b>Filing ID: Office Use Only</b>

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Division of Waste Management and Radiation Control	
<b>Room number:</b>	2 <sup>nd</sup> Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N. 1950 W.	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tom Ball	801-536-0251	tball@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R313-16-230. Registration of Radiation Machines.
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
As currently written, R313-16-230(3)(a) requires that a person wanting to register an ionizing radiation producing machine must use form DWMRC-10. The Division is in the process of developing an online, electronic system for the submission of a registration application that will be more efficient and more convenient for applicants. The current rule does not allow for the electronic process.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
R313-16-230(3)(a) is being revised to provide flexibility to applicants by allowing applications to be submitted electronically or by using the paper form.
Additionally, formatting errors are being corrected and minor wording changes are being made in the rule.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
It is not anticipated that there will be any cost or savings to the state budget due to this amended rule because the Division will still review and process registration applications no matter what method is used to submit them. Any state government agencies that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the division does not have enough data to calculate these savings and it is believed that any savings will be minimal.
<b>B) Local governments:</b>
It is not anticipated that there will be any cost to local governments because of this amended rule. Any local governments that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the division does not have enough data to calculate these savings and it is believed that any savings will be minimal.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

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

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

It is not anticipated that there will be any cost to non-small businesses because of this amended rule. Non-small businesses that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

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

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

There will not be any additional compliance costs for affected persons because of this amended rule. Persons who need to register an ionizing radiation producing machine must still submit an application. This amended rule simply provides options for the submission of the application.

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

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

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

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

**Citation Information**

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

Section 19-3-104		

**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

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

<b>Official Title of Materials Incorporated (from title page)</b>	
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<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

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

<b>Official Title of Materials Incorporated (from title page)</b>	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**Public Notice Information**

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

**A) Comments will be accepted until:** 03/31/2023

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

<b>On (mm/dd/yyyy):</b>	<b>At (hh:mm AM/PM):</b>	<b>At (place):</b>

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

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

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee and title:</b>	Douglas J. Hansen, Director	<b>Date:</b>	mm/dd/yyyy
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**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**

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

**R313-16-230. Registration of Radiation Machines.**

- (1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the [D]director.
- (2) Registration shall be required annually in accordance with a schedule established by the [D]director.
- (3) Registration [for the facility] is achieved when the [D]director receives the following:
  - (a) a current and complete application **for registration of radiation machines submitted electronically through the division's website or using** form DWMRC-10 [for registration of radiation machines]; and
  - (b) annual registration fees.
- (4) Registration for the current fiscal year shall be acknowledged by the [D]director through receipts for the remittance of the registration fee.

**KEY:** x-rays, inspections

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

**Notice of Continuation:** April 8, 2021

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

WASTE MANAGEMENT AND RADIATION CONTROL BOARD  
 Executive Summary  
 REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE  
 EnergySolutions, LLC  
 February 9, 2023

<p><b>What is the issue before the Board?</b></p>	<p>On January 25, 2022, EnergySolutions, LLC submitted a request to the Director of the Division of Waste Management and Radiation Control for a site-specific treatment variance from the Utah Hazardous Waste Management Rules for waste requiring treatment with Polychlorinated Biphenyls (PCBs) as underlying hazardous constituents (UHCs). EnergySolutions seeks approval to land dispose, in EnergySolutions' Mixed Waste Landfill Cell, site generated waste that is treated to meet all treatment standards except the treatment standard for PCBs.</p>
<p><b>What is the historical background or context for this issue?</b></p>	<p>EnergySolutions requests approval to treat waste containing hazardous contaminants and PCBs and dispose of the treated residual in EnergySolutions' Clive Facility Mixed Waste Landfill Cell (MWLC). The concentration of PCBs within the treated residual will not meet the Universal Treatment Standards (UTS) described in R315-13-1 (40 CFR 268.48 incorporated by reference). All actions requested in this variance will be performed in accordance with EnergySolutions' state-issued Part B Permit.</p> <p>This variance is being requested for up to approximately 12 tons of waste generated at the Clive Mixed Waste Facility (site-generated waste) that may be circumstantially contaminated with PCBs from operations at the site. Examples of site-generated wastes include baghouse dust, sump clean-out material, and decontamination sludges. Site activities involving PCBs include, but are not limited to, repackaging waste containers and shredding PCB capacitors. Analysis of site-generated waste over the last year has detected PCB concentrations up to 19.4 ppm (mg/kg). The UTS concentration for PCBs is 10 mg/kg.</p> <p>This type of waste has been generated and successfully treated in the past at the Clive Facility. Treatment formulas have been developed and analytical data has demonstrated that all contaminants, except PCBs, met treatment standards in these treatment runs. EnergySolutions has many years of data demonstrating that the treatment formulas developed for site-generated wastes have successfully treated the waste.</p> <p>The MWLC is a regulated hazardous waste landfill permitted by the State of Utah. Consequently, if the PCB waste did not contain RCRA hazardous waste codes, but contained the same PCB concentrations, it could be disposed in the MWLC or LLRW without additional treatment. Therefore, treatment of the PCBs within this waste stream is technically inappropriate and not required for final disposal of the waste form.</p> <p>Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.</p>

<p><b>What is the governing statutory or regulatory citation?</b></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><b>Is Board action required?</b></p>	<p>No. This is an informational item before the Board.</p>
<p><b>What is the Division/Director's recommendation?</b></p>	<p>The Director will provide a recommendation following the public comment period at the next Board meeting.</p>
<p><b>Where can more information be obtained?</b></p>	<p>For technical questions, please contact Tyler Hegburg (801) 536-4271. For legal questions, please contact Bret Randall at (801) 536-0284.</p>

DSHW-2023-000709  
Attachment: DSHW-2023-000707

January 25, 2023

CD-2023-015

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 Mixed Waste Requiring Treatment with a PCB Underlying Hazardous Constituent

Dear Mr. Hansen:

EnergySolutions hereby requests a variance from Utah Administrative Code (UAC) R315-268-40(a)(3) for waste generated at the Clive Facility that carries characteristic and listed hazardous waste codes and also contains Polychlorinated Biphenyls (PCBs) as an Underlying Hazardous Constituent (UHC). 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:

*40 CFR 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 treat waste containing hazardous contaminants and PCBs and dispose of the treated residual in EnergySolutions' Clive Facility Mixed Waste Landfill Cell (MWLC). The concentration of PCBs within the treated residual will not meet the Universal Treatment Standards (UTS) described in R315-13-1 (40 CFR 268.48 incorporated by reference). All actions requested in this variance will be performed in accordance with EnergySolutions' state-issued Part B Permit.

This variance is being requested for up to approximately 12 tons of waste generated at the Clive Mixed Waste Facility (site-generated waste) that may be circumstantially contaminated with PCBs from operations at the site. Examples of site-generated wastes

include baghouse dust, sump clean-out material, and decontamination sludges. Site activities involving PCBs include, but are not limited to, repackaging waste containers and shredding PCB capacitors. Analysis of site-generated waste over the last year has detected PCB concentrations up to 19.4 ppm (mg/kg). The UTS concentration for PCBs is 10 mg/kg.

This type of waste has been generated and successfully treated in the past at the Clive Facility. Treatment formulas have been developed and analytical data has demonstrated that all contaminants, except PCBs, met treatment standards in these treatment runs. EnergySolutions has many years' data demonstrating that the treatment formulas developed for site-generated waste have successfully treated the waste.

PCB waste generated at the site which is greater than 50 ppm is regulated by the Environmental Protection Agency (EPA) as PCB remediation waste. The EPA has clarified the disposal of PCB remediation waste with a concentration greater than 50 ppm PCBs in 40 CFR 761.61(a)(5)(i)(B)(2)(iii) as follows:

*Bulk PCB remediation wastes with a PCB concentration  $\geq 50$  ppm shall be disposed of in a hazardous waste landfill permitted by EPA under section 3004 of RCRA, or by a State authorized under section 3006 of RCRA.*

The MWLC is a regulated hazardous waste landfill permitted by the State of Utah. Consequently, if the PCB waste did not contain RCRA hazardous waste codes, but contained the same PCB concentrations, it could be disposed in the MWLC or LLRW without additional treatment. Therefore, treatment of the PCBs within this waste stream is technically inappropriate and not required for final disposal of the waste form.

This variance was previously requested in letters dated November 17, 2011; March 7, 2013; March 4, 2014; April 21, 2016; and September 27, 2017. These variance requests were approved on February 9, 2012; April 11, 2013; April 10, 2014; June 9, 2016; and November 9, 2017 respectively.

EnergySolutions requests that a variance be granted to allow the land disposal of site-generated waste that will be treated to meet all treatment standards except the treatment standard for PCBs.

The name, phone number, and address of the person who should be contacted to notify EnergySolutions of decisions by the Director is:



Mr. Doug Hansen  
CD-2023-015  
January 25, 2023  
Page 3 of 3

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,

Steve D. Gurr  
Environmental Engineer

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.