

R317. Environmental Quality, Water Quality.

R317-16. Great Salt Lake Mineral Extraction Facility Operator Certification Approval.

R317-16-1. Purpose and Authority.

- (1) Authority. This rule is promulgated pursuant to Utah Code Section 65A-6-4.
- (2) Purpose. The purpose of this rule is to implement regulations consistent with the purpose and intent of the legislature's amendments to Utah Code Section 65A-6-4 regarding the impact to biota or chemistry from mining of Great Salt Lake elements and minerals.

R317-16-2. Definitions.

In addition to the general definitions in Section R317-1-1, the following definitions apply for purposes of this section only:

- (1) "Application for Operator Certification Approval" or "Application" means a request for concurrence, together with the required information detailed in Section R317-16-3, with an operator's certification that its operations will not negatively impact biota or chemistry of the Great Salt Lake.
- (2) "Biota" means all plants, fungi, animals, and other bacteria and archaea in the Great Salt Lake ecosystem.
- (3) "Certification Decision" includes the following:
 - (a) "Operator Certification Approval" means a document prepared pursuant to this Section indicating the director's approval of an operator's certification. An operator certification approval is a permit order as defined in Subsection 19-1-301.5(1)(f)(i).
 - (b) "Operator Certification Denial" means a document prepared pursuant to this section indicating the director's denial of an operator's certification. An operator certification denial is a permit order as defined in Subsection 19-1-301.5(1)(f)(i).
- (4) "Chemistry" means the properties, composition, and structure of the elements and compounds, and interactions thereof, making up the waters, brines, and substrate of the Great Salt Lake.
- (5) "Director" means the director of the Utah Division of Water Quality.
- (6) "Discharge" means any water or substance placed into a receiving water which includes any combination of treated, processed, replacement, or return flows.
- (7) "Division" means the Utah Division of Water Quality.
- (8) "Draft Certification Decision" means a document prepared pursuant to this rule indicating the director's preliminary decision to approve or deny an operator certification.
- (9) "Forestry, Fire, and State Lands"(FFSL) means the Utah Department of Natural Resources, Division of Forestry, Fire, and State Lands.
- (10) "GSL" means Great Salt Lake.
- (11) "Negative Impact" includes any activity or action that:
 - (a) negatively alters the salinity, concentrations of pollutants, or other aspects of water chemistry in GSL;
 - (b) negatively alters the volume or timing of water flows to GSL or water levels in GSL or GSL wetlands;
 - (c) reduces, degrades, or otherwise negatively alters habitat in and around the Great Salt Lake; or
 - (d) results in harmful health impacts to GSL biota, including disruptions to survival, reproduction, or growth.

(12) “Operator” means a person submitting an application for operator certification approval to pursue extraction of GSL elements or minerals to the Division of Water Quality.

(13) “Operator Certification” means a statement by an operator that its operation will not negatively impact the biota or chemistry of the Great Salt Lake.

R317-16-3. Application Procedures.

(1) The operator shall request a pre-filing meeting with the division and with FFSL at least 30 days prior to application for operator certification approval. The division and FFSL may jointly waive or shorten the requirement for a pre-filing meeting request.

(2) An application for operator certification approval shall be made simultaneously with the application to FFSL pursuant to Subsection 65A-6-4(6)(b)(iii). If the application is not made in accordance with this requirement, there may be delays and additional fees to allow the collection and consideration of all pertinent information.

(3) Within thirty days of receiving the application for operator certification approval, the division will notify the operator whether the application is complete. If an application is incomplete or is otherwise deficient, the division shall notify the operator and provide a list of missing information to supply.

(a) To remedy an incomplete or deficient application, an operator may submit the additional missing information requested by the division within thirty days after the division’s notice of incompleteness or deficiency. An application which is deemed incomplete or deficient and is not remedied within thirty days is administratively denied, and the operator must resubmit an application for operator certification approval.

(4) Applications for operator certification approval shall be submitted on the form provided by the division. All information submitted in support shall have been obtained within one year of filing the application, unless otherwise extended in writing by the division.

(5) The operator shall include a statement that the proposed project will not negatively impact the biota or chemistry of GSL and shall provide scientific evidence supporting the certification.

(6) The operator shall notify the director in writing of changes which may affect the application for operator certification and certification approval process.

(7) If an operator who is required to obtain an operator certification approval fails to do so, the director may process an application for operator certification approval after-the-fact. An application after-the-fact shall be reviewed under the same standards as a timely application for operator certification approval. The director may require restoration or other actions as a pre-condition of processing the application. An operator submitting an after-the-fact application shall have the burden of proving what the original baseline conditions were, and an application may be denied in the absence of such proof. After-the-fact operator certification approvals may not be retroactively effective.

(8) Once a fee is established pursuant to Subsection 19-1-201(6)(i), the operator shall include the fee with the application. The division will not commence review of the application until it has received the applicable fee. The fee is not refundable or transferable to a separate application.

R317-6-4. Application Contents.

Unless otherwise determined by the director, the application for operator certification approval shall include the following complete information and documentation:

- (1) application date;
- (2) contact information consisting of:
 - (a) legal name, permanent address, telephone number and email address of the operator;
 - (b) name and permanent address of the operator's registered agent in Utah;
 - (c) name, address, email address and telephone number of the primary contact for the application, including the person to whom requests for additional information should be addressed; and
 - (d) signature of the operator; a corporate application must be signed by an officer of the corporation;
- (3) project information:
 - (a) facility and process information:
 - (i) a description of the overall project including the construction and operation of the facilities which may result in discharge;
 - (ii) plan or drawings that include a plan view, cross section view, and elevation view;
 - (iii) detailed information pertaining to chemicals used during the process, including a mass balance of constituents removed or added to GSL;
 - (iv) documentation of appropriate containment and disposal infrastructure for waste generated by the project;
 - (v) location and acreage of lakebed used;
 - (vi) estimated dates when the activity may begin and end, and the date or dates when the withdrawals or discharges may take place;
 - (vii) supporting documentation submitted to federal agencies, including maps, plans, specifications, project dimensions, copies of associated federal applications, biological and engineering studies, environmental assessment or environmental impact statements, or alternative analyses, as applicable;
 - (viii) the volume of water depleted through the process;
 - (ix) rate of extraction for the targeted and non-targeted minerals or elements and estimated rate of depletion of the targeted and non-targeted mineral or element in GSL;
 - (b) withdrawal information:
 - (i) names of the waters where any withdrawals will occur, including the precise latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;
 - (ii) detailed information on the quantity of water withdrawn and depleted;
 - (iii) detailed information on the timing of the withdrawal;
 - (c) discharge information:
 - (i) names of the waters where the discharges may occur, including the precise latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;
 - (ii) sources, volume, and timing of the discharge
 - (iii) characterization of the physical, chemical, biological, thermal, and other pertinent properties of the discharge; at a minimum: pH, total alkalinity, total dissolved solids, total suspended solids, sulfate, nitrate, nitrite, carbonate, bicarbonate, chloride, hydroxide, chemical oxygen demand, biological oxygen demand, silica, zinc, magnesium, sodium, calcium, potassium, boron, bromine, aluminum, iron, and silicon; range of temperatures expected in effluent; density range of effluent to be discharged; and quantity of foreign materials that would be discharged to the GSL on an annual basis.

Additional information regarding any unique features of the

- (d) additional information regarding any unique features of the project;
- (4) impacted habitat:
 - (a) description of existing habitat and biota potentially in and around the area of operation;
 - (b) description of the potential physical impact to habitat and biota in and around the discharge location;
 - (c) the operator shall evaluate and provide a response to the following:
 - (i) Are there any less-degrading alternatives?
 - (ii) Are any plans in place to mitigate any adverse environmental effects of the proposed operation?
 - (iii) Will existing beneficial uses be maintained and protected?
 - (5) monitoring & inspection plan:
 - (a) monitoring plan to address long term cumulative effects of withdrawals and discharges on the biota and chemistry of the GSL including available baseline data;
 - (b) a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of the equipment or facilities employed in control of any proposed discharge;
 - (c) provide a map showing the locations of any monitoring points;
 - (6) evidence supporting the operator certification:
 - (a) an operator certification should consider both short term, localized effects and long term, ecosystem impacts of the project;
 - (b) examples of evidence supporting a certification may include:
 - (i) a quantitative comparison of influent and effluent volume and chemical composition;
 - (ii) modeled annual impacts to salinity or concentrations of other important chemical parameters in GSL;
 - (iii) evaluation of impacts to GSL biota including:
 - (A) a quantitative comparison of effluent chemical concentrations to applicable water quality standards; or
 - (B) other scientifically defensible biological response thresholds;
 - (iv) other scientifically defensible means for evaluating project impacts on GSL chemistry and biota; and
 - (7) any other information as requested by the director.

R317-16-5. Draft Certification Decision.

- (1) Within sixty days after receiving a complete and accepted application for operator certification approval, the director shall issue a draft certification decision identifying whether the director intends to issue an operator certification approval or an operator certification denial.
- (2) The draft certification decision shall be subject to a public notice and comment period of 30 days.
- (3) The division may publish the public notice using the following methods:
 - (a) Utah Department of Environmental Quality website; and
 - (b) the Utah Public Notices website.
- (4) The director may, at the director's discretion, hold a public hearing to take oral comments if:

- (a) the division receives a request in writing not more than 15 days after the publication date of the draft certification decision; and
- (b) the request is from:
 - (i) another state agency,
 - (ii) ten interested persons, or
 - (iii) an interested association having not fewer than ten members.
- (5) The director shall consider the comments received during the public notice and comment period in finalizing the certification decision.

R317-16-6. Certification Decision.

- (1) After review of the application for operator certification approval and after review and consideration of all comments received during the public notice and comment period, the director shall issue one of the following certification decisions:
 - (a) operator certification approval; or
 - (b) operator certification denial.
 - (i) If the director issues an operator certification denial, the denial shall include reasons for denial.
 - (ii) If the director issues an operator certification denial, the director will notify FFSL of the denial.
- (2) The certification decision shall include a summary of the comments received during the public notice and comment period and state whether any changes were made to the certification decision as a result of the comments.
- (3) Nothing in the director's operator certification approval authorizes the operator to not follow all other required applicable federal, state, and local laws.

R317-16-7. Term of Operator Certification Approval.

- (1) An operator certification approval shall be effective for a term not to exceed five (5) years.
- (2) An operator shall submit an application for operator certification approval to renew its operator certification approval no later than 180 days prior to the expiration of the certification approval.
 - (a) Failure to submit an application for operator certification approval to renew shall result in a lapse of the operator certification approval.
 - (b) The director will notify the operator and FFSL of the lapse. The director's notification is not a permit order.

R317-16-8. Reevaluation of Operator Certification Approval.

- (1) If any of the following occur, the director shall notify the operator that it must resubmit, within 60 days, an application for operator certification approval for reevaluation:
 - (a) the operator's failure to disclose fully in the application all relevant facts;
 - (b) the operator's misrepresentation of any relevant fact at any time;
 - (c) existence of evidence that the operation no longer meets the requirement that it not negatively impact the biota or chemistry of GSL;
 - (d) request for a major modification in the operator's Utah Pollutant Discharge Elimination System (UPDES) permit as defined by Subsection R317-8-5.6; or
 - (e) the emergency trigger as defined in Section R652-21-1103.

(2) The reevaluation will follow all procedures specified in this rule.

R317-16-9. Transfer of Operator Certification Approval.

(1) The operator shall give written notice to the director of any transfer of the operator certification approval at least 30 days in advance of the effective date of the transfer.

(2) The notice shall include a written agreement between the existing and new operators establishing a specific date for transfer of certification responsibility.

(3) The notice shall contain all information required under contact information in Subsection R317-16-4(2) for the new operator.

R317-16-10. Effect of Operator Certification Approval on Other Required Permits.

(1) Operator certification approval does not exempt the operator from obtaining any other required permits.

(2) An operator certification approval is required in addition to a Utah Pollutant Discharge Elimination System (UPDES) permit for facilities subject to this rule; however, reporting required by the operator certification approval may also be required through the UPDES permit, at the director's discretion.

KEY: **Water Quality,** _____

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