

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 Section 65A-6-4.

(2) Purpose. To implement administrative rules for approval of operator certification according to Section 65A-6-4 and for the purpose of protecting the biota and chemistry of the Great Salt Lake from possible negative impacts in connection with brine processing and mineral extraction activities.

R317-16-2. Definitions.

The following definitions apply for purposes of this rule only:

(1) "Application for Operator Certification Approval" or "Application" means a request for approval of an operator's certification that its operations will not negatively impact biota or chemistry of the Great Salt Lake, and includes the specific information detailed in Section R317-16-3 and R317-16-5.

(2) "Biota" means all plants, fungi, animals, protists, bacteria, and archaea in Great Salt Lake.

(3) "Brine Depletion" means the volume of Brine Water consumed through processing and operations, calculated by subtracting the volume of Returned Water from the volume of Brine Water.

(4) "Brine Water" means water diverted from Great Salt Lake.

(5) "Certification Decision" includes the following:

(a) "Operator Certification Approval" means a permit order, as defined in Subsection 19-1-301.5(1)(f)(i), indicating the director's approval of an operator's certification.

(b) "Operator Certification Denial" means a permit order, as defined in Subsection 19-1-301.5(1)(f)(i), indicating the director's denial of an operator's certification.

(6) "Chemistry" means the properties, composition, and structure of the elements and compounds, and interactions thereof, making up the waters, brines, and substrate of Great Salt Lake.

(7) "Director" means the director of the Utah Division of Water Quality.

(8) "Discharge" means any water, substance, or pollution placed into a receiving water; which may include any combination of treated, processed, mitigation, or returned waters.

(9) "Division" means the Utah Division of Water Quality.

(10) "Draft Certification Decision" means a document indicating the director's preliminary decision to approve or deny an operator's certification.

(11) "Externally Sourced Water" means water diverted from sources other than Great Salt Lake and used for processing and operations.

(12) "Feasibility Assessment" means the same as that term defined in Section R652-21-200.

(13) "Forestry, Fire, and State Lands" or "FFSL" means the Utah Department of Natural Resources, Division of Forestry, Fire, and State Lands.

(14) "Foreign materials" means materials added to a discharge or a commercial process.

(15) "GSL" means Great Salt Lake.

(16) "Mitigation Water" means the water diverted from sources other than Great Salt Lake and delivered to Great Salt Lake to compensate for Brine Depletion, pursuant to Section 65A-6-4. Mitigation Water shall not include wastewater reuse.

- (17) “Negative Impact” includes any activity or action that:
- (a) causes pollution, or negatively alters the salinity 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 Great Salt Lake; or
 - (d) results in harmful physiological impacts to GSL biota, including disruptions to survival, reproduction, or growth.
- (18) “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.
- (19) “Operator Certification” means a statement by an operator that its operation will not negatively impact the biota or chemistry of the Great Salt Lake.
- (20) “Pollution” means the same as that term is used in Section 19-5-102.
- (21) “Returned Water” means any water discharged into Great Salt Lake from commercial operations.
- (22) “Total Water” means the sum of Externally Sourced Water and Brine Water.
- (23) “Water Depletion” means the volume of Total Water consumed through processing and operations, calculated by subtracting the volume of Returned Water from the volume of Total Water.

R317-16-3. Feasibility Assessment – Certification Approval By Rule.

- (1) The operator shall request a pre-filing meeting with the division and with FFSL at least 30 days prior to submitting a feasibility application with FFSL. The division and FFSL may jointly waive or shorten the requirement for a pre-filing meeting request.
- (2) For the feasibility assessment only, a Utah Pollutant Discharge Elimination System (“UPDES”) permit is considered an operator certification approval by rule.
- (3) To obtain operator certification approval by rule, the operator shall submit:
- (a) an application for a UPDES permit; and
 - (b) information listed in this section pertaining to the feasibility assessment.
 - (i) the feasibility assessment information shall be submitted on a form provided by the division.
 - (4) Feasibility assessment information required:
 - (a) project information:
 - (i) mass balance of principal GSL salinity constituents, including all target and non-target minerals altered across the principal mineral processing steps;
 - (ii) a water balance at design flow, low flow conditions and across a range of lake levels;
 - (iii) generated waste containment and disposal infrastructure descriptions, including residuals and disposal methods;
 - (iv) location and acreage of lakebed used;
 - (v) 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;
 - (vi) estimated water depletion; and

(vii) plan to determine 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 brine water and externally sourced water where 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 brine water and externally sourced water withdrawn and

(iii) detailed information on the timing of the withdrawal(s);

(c) discharge information:

(i) 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

(d) impacted habitat:

(i) description of existing GSL habitat and biota in and around the area of operation;

(ii) description of the potential physical impact to habitat and biota in and around the discharge location;

(iii) description of the technical alternatives evaluation, specifically those that are less degrading of water quality;

(iv) plan to mitigate any negative impacts of the proposed operation;

(v) plan to ensure existing beneficial uses will be maintained and protected.

(e) monitoring and inspection plan:

(i) a description of the methods and means to monitor the quality and characteristics of the discharge and the operation of the equipment or facilities employed in control of any proposed discharge;

(ii) monitoring plan to address long term cumulative effects of withdrawals and discharges on the biota and chemistry of the GSL including available baseline data;

(iii) a map showing the locations of proposed monitoring points;

(f) evidence supporting the operator certification:

(i) consideration of both short-term effects and long term, ecosystem impacts of the project;

(ii) examples of evidence supporting a certification may include:

(A) a quantitative comparison of influent and effluent volume and chemical composition;

(B) modeled annual impacts to salinity or concentrations of other important chemical parameters in GSL;

(C) evaluation of impacts to GSL biota including:

(I) a quantitative comparison of effluent chemical concentrations to applicable water quality standards; or

(II) other scientifically defensible biological response thresholds;

(D) other scientifically defensible means for evaluating project impacts on GSL chemistry and biota;

R317-16-4. Operations Application Procedures.

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

(2) The operator shall submit an application for operator certification approval simultaneously with the application to FFSL pursuant to Subsection 65A-6-4(6)(b)(iii).

(3) Applications for operator certification approval shall be submitted on the form provided by the division.

(a) Unless extended in writing by the division, the operator must obtain all information submitted with the application within one year of filing the application.

(4) The operator shall submit a UPDES application simultaneously with the application for operator certification approval.

(a) UPDES permit approval is not a certification decision. The director shall issue a certification decision separate from a UPDES permit.

(5) Within 45 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, the division shall notify the operator of the missing information.

(a) An operator may submit the missing information within 45 days after the division's notice of incompleteness. The division will administratively deny an incomplete application not remedied within 45 days, and the operator must resubmit a new application for operator certification approval.

(6) The operator shall notify the director in writing of changes that may affect the application for operator certification.

(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 full 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.

(8) The operator is responsible for payment of hourly fees, established pursuant to Subsection 19-1-201(6)(i). The operator shall submit a fee retainer, specified in the application form, together with its application for certification approval. The division will not commence review of the application for certification approval until it has received the fee retainer. The division will invoice the operator on a routine basis, and may cease review of the application for nonpayment.

R317-6-5. Operations Application Content.

(1) Unless otherwise determined in writing by the director, the application for operator certification approval shall include the following:

(a) all information required under Subsection R317-16-3(4), revised and updated to reflect the scale of the operations design;

(b) a summary of any changes made as a result of the feasibility assessment;

(c) a summary of findings establishing the operator's feasibility assessment had no negative impact on the biota or chemistry of GSL;

- (d) all data and data analysis related to GSL biota and chemistry derived from the feasibility assessment;
- (e) a UPDES permit application;
- (f) any other information related to the operation's impact to the biota or chemistry of GSL, as requested by the director;
- (g) a statement that the proposed project will not negatively impact the biota or chemistry of GSL and shall provide scientific evidence supporting the certification.

R317-16-6. Draft Certification Decision.

- (1) Within 60 days of receiving a complete application for operator certification approval, the director shall issue a draft certification decision.
- (2) The draft certification decision shall be subject to a public notice and comment period of 30 days.
- (3) The division will 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 director 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) Public notice of a public hearing shall be given at least seven days in advance of the hearing. Public notice of a hearing may be combined and provided at the same time as public notice of any of the following permit orders:
 - (a) a draft certification decision issued under this rule;
 - (b) a draft UPDES permit issued under Rule R317-8; or
 - (c) a draft water quality certification issued under Rule R317-15.
- (6) The director shall consider the comments received during the public notice and comment period in finalizing the certification decision.

R317-16-7. Certification Decision.

- (1) After review of the application for operator certification approval and consideration of comments received during the public notice 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.

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

- (1) An operator certification approval shall be effective for a term of ten 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) If an operator certification approval lapses before the director issues a certification decision on a timely renewal application, the operator certification approval will continue until the director issues a certification decision on the renewal application.
 - (b) Review of the operator's application to renew its operator certification approval will follow all procedures specified in this rule.
 - (c) Failure to submit an application for operator certification approval to renew shall, on the certification approval's expiration date, result in a lapse of the operator certification approval.
 - (d) The director will notify the operator and FFSL of the lapse. The director's notification is not a permit order.

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

- (1) If any of the following occur, the director may notify the operator that it must resubmit, within 60 days, an application for operator certification approval for reevaluation:
 - (a) the operator's failure to fully disclose all relevant facts in the application;
 - (b) the operator's misrepresentation of any relevant fact at any time;
 - (c) existence of evidence that the operation is negatively impacting the biota or chemistry of GSL;
 - (d) request for a major modification in the operator's UPDES permit as defined by Subsection R317-8-5.6;
 - (e) lapse of the operator's certification approval; or
 - (f) the emergency trigger as defined in Section R652-21-1403.
- (2) The reevaluation will follow all procedures specified in this rule.

R317-16-10. 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 operator establishing a specific date for transfer of certification responsibility.
- (3) The notice shall contain the following contact information:
 - (a) legal name, permanent address and telephone number;
 - (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.

R317-16-11. Effect of Operator Certification Approval on Other Required Permits.

- (1) Operator certification approval does not exempt the operator from complying with and/or obtaining any other permits required by federal, state, or local law.

(2) An operator certification approval is required in addition to a 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.

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