



State of Utah

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Department of  
Environmental Quality

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DIVISION OF WATER QUALITY  
Walter L. Baker, P.E.  
Director

**MEMORANDUM**

**TO:** Utah Water Quality Board

**THROUGH:** Walter L. Baker, P.E.   
Director

**FROM:** Judy Etherington  
Wastewater Certification Program Coordinator

**DATE:** June 14, 2013

**SUBJECT:** Request To Initiate Rulemaking On R317-11, Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems”

As a result of SB21 which instituted changes in the duties and responsibilities of the Water Quality Board and the director of the Division of Water Quality, R317-11 was recently subjected to intense review by the Office of the Attorney General for compliance with this bill. These proposed changes address modifications to the rule to clarify how those duties and responsibilities will now be incorporated in the Onsite Professional Certification Program. A couple of definitions were changed to synchronize them with recent proposed changes to Rule R317-4.

It is recommended that the Water Quality Board approve initiating rulemaking for the attached proposed changes to *Utah Administrative Code, R317-11*.

**Attachments:** Summary of Proposed Revisions to R317-11 & Revisions to *Utah Administrative Code, R317-11*, "Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems" (DWQ-2013-004133)

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## SUMMARY OF PROPOSED REVISIONS TO R317-11

The following changes are made.

- Change language to reflect the transfer of responsibility for administration of the certification program from the executive secretary to the director.
- Removed numbering of definitions in coordination with the recent proposed changes to R317-1.
- Added a definition for "Approved Training Provider" to replace the definition which limited who could provide the required training and appeared to not comply with the state purchasing requirements.
- Changed definitions for "Alternative onsite wastewater system" and "conventional system" to be the same as those proposed for the new R317-4.
- Corrections to punctuation, capitalization, and references to comply with Division of Administrative Rules guidelines.
- Changed wording to minimize unnecessary duplication of phrases that are relevant to multiple levels of certification requirements.
- Added language to include the addition of the requirement of SB81 regarding citizenship or alien identification certification.
- Changed term "gross negligence" to "significant negligence" at the advice of counsel.

**R317. Environmental Quality, Water Quality.**

**R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems.**

**R317-11-1. Authority, Purpose and Scope.**

1.1. This rule describes the procedures for certification and recertification of individuals who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as set forth in Title 19, Chapter 5, Section 121.

1.2. The purpose of this rule is to define the minimum requirements for those persons who design, inspect, and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems [~~as directed by the board~~] and establish methods for compliance and evaluating non-compliance.

1.3. These certification rules apply to any person who designs, inspects, or maintains underground wastewater disposal systems, or who conducts soil evaluations or percolation tests for underground wastewater disposal systems. Certification is required by any person who performs these activities as provided below.

**R317-11-2. Definitions.**

[2.1.—] "~~Alternative onsite wastewater system~~" means [~~a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state~~] an onsite wastewater system that is not a conventional onsite wastewater system.

"Approved Training Provider" means a provider approved by the director for training and examinations for certification of persons who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems.

[2.2.—] "~~Board~~" means ~~the Utah Water Quality Board.~~

—2.3.—] "~~Certificate~~" means a certificate issued by the [~~Executive Secretary~~] director stating that the recipient has met the minimum requirements to be certified as described in this rule.

[2.4.—] "~~Conventional system~~" means an onsite wastewater system [~~which consists~~] typically consisting of a building sewer, a septic tank, and an absorption system [consisting of a standard] utilizing absorption trenches, [a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an-] absorption beds, deep wall trenches, or seepage pits.

[2.5.—] "Director" means the director of the Division of Water Quality.

"Division" means the Utah Division of Water Quality. [

—2.6.—] "~~Executive Secretary~~" means ~~the Executive Secretary of~~

~~the Utah Water Quality Board.]~~

~~[2.7.—]~~ "Onsite professional" means a person who is certified at Level 1, 2, or 3 according to this rule.

~~[2.8.— "Training Center" means the Utah On-site Wastewater Treatment Training Center which has been designated by the Executive Secretary for training and administration of examinations for certification of persons who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems.—~~

~~2.9.—]~~ "Underground Wastewater Disposal System" means a system for underground disposal of wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems as defined in Rule R317-1.

### **R317-11-3. Classes of Certification.**

3.1 There are three classes of onsite professional certification, Level 1 being the lowest and Level 3 being the highest:

- A. Level 1, soil evaluations and percolation testing;
- B. Level 2, design, inspection and maintenance of conventional underground wastewater disposal systems, including soil evaluations and percolation testing; and
- C. Level 3, design, inspection and maintenance of alternative or conventional underground wastewater disposal systems, including soil evaluations and percolation testing.

### **R317-11-4. Individuals Not Required to Obtain Certification.**

4.1. An individual is not required to obtain certification to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

4.2. An uncertified individual may conduct soil evaluations or percolation tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

- A. [H] has the capability of properly conducting the tests, as determined by the local health department and
- B. [I] is supervised by a certified individual when conducting the tests.

4.3. A person involved in the pumping of an underground wastewater disposal system does not have to be certified under this rule, although ~~[licensing by]~~ notification to the local health department is required under Rule R317-550.

4.4. Licensed plumbers and electricians, when maintaining electrical equipment or wastewater drainage lines leading to the

underground wastewater disposal systems, are not required to be certified under this rule.

4.5. Uncertified employees, subordinates or associates of a certified individual are not required to be certified under this rule when working on activities related to underground wastewater disposal systems under the supervision of a certified individual. Supervision means that a certified individual is personally responsible for the work, and reviews, corrects and approves work done by an uncertified employee, subordinate or associate. Such work must be signed by a certified individual.

**R317-11-5. Qualifications for Certification.**

5.1. [~~Level 1, Soil Evaluations and Percolation Testing.~~] In order to qualify for initial Level 1 certification, a person must:

A. [A] attend a training course provided by [~~the Training Center~~] an approved training provider specifically for the purpose of certification at Level 1 [7]; and

B. [D] demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 1 training course.

5.2. [~~Level 2, Design, Inspection and Maintenance of Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing.~~] In order to qualify for initial Level 2 certification, a person must:

A. [A] attend a training course provided by [~~the Training Center~~] an approved training provider specifically for the purpose of certification at Level 2 [7];

B. [D] demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 2 training course [7]; and

C. [B] be certified for soil evaluations and percolation testing at Level 1.

5.3. [~~Level 3, Design, Inspection and Maintenance of Alternative or Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing.~~] In order to qualify for initial Level 3 certification, a person must:

A. [A] attend a training course provided by [~~the Training Center~~] an approved training provider specifically for the purpose of certification at Level 3 [7];

B. [D] demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 3 training course [7]; and

C. [B] be certified for soil evaluations and percolation testing at Level 1, and certified for design, inspection and maintenance of conventional systems at Level 2.

5.4. All applicants are required to take an examination, but an applicant's current licensing and experience may be substituted for attending the training courses described in Subsections R317-11-5.1.A, R317-11-5.2.A, and R317-11-5.3.A, as follows:

A. ~~An environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act [ , may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training, ]~~ qualifies to substitute licensure and experience for required training for a Level 1, 2 or 3 certification if the Environmental Health Scientist [must provide] provides to the [Executive Secretary] director evidence of current licensure in Utah and [2]two years experience appropriate to the class of certification requested.

~~[5.5.]~~ B. A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act ~~[ , may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training ]~~ qualifies to substitute licensure for required training for a Level 1, 2, or 3 certification if the professional engineer [must provide] provides to the [Executive Secretary] director evidence of current Utah licensure.

~~[5.6.]~~ C. A person who is a contractor licensed under Title 58, Chapter 55, Utah Construction Trades licensing Act ~~[ , may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1 or 2. In order to qualify for waiver of training ]~~ qualifies to substitute licensure and experience for required training for a Level 1 or 2 certification if the licensed contractor [must provide] provides to the director evidence of at least five years of experience installing [constructing ] underground wastewater disposal systems.

5. ~~[7]~~ 5. Evidence of current licensure and experience appropriate to the class of certification must be provided to the ~~[Executive Secretary] director~~ at the time of application for certification.

5.6. An applicant is also required to meet the requirements of Section 63G-11-104 regarding citizenship or alien identification certification.

### **R317-11-6. Application for Certification.**

6.1. In order to become certified at any level, a person must:

A. meet the qualifications for certification as described in Section R317-11-5 [Complete the relevant training course(s) with the Training Center (See R317-11-5.4 — 5.6 above for alternate requirements for licensed environmental health scientists, engineers, and contractors) ] ; and

B. ~~[Pass the corresponding test(s)] ; and~~

~~C. ]~~ submit an application to the [Executive Secretary] director on forms approved by the [D] division, including citizenship or alien identification certification, along with payment of applicable fees.

### **R317-11-7. Training and Examinations.**

Training will be provided by ~~[the Training Center]~~ an approved training provider. Examinations will be given at the conclusion of each training session. Training will be provided at least twice per year, but may be given more often at the discretion of the ~~[Training Center]~~ approved training provider.

**R317-11-8. Certificates.**

8.1. Certificates will be issued by the ~~[Executive Secretary]~~ director upon receipt of the completed application, required fees, and evidence that the requirements of Section R317-11-5 ~~[above]~~ have been met.

8.2. Date of issuance of an initial certificate will be determined by the date the exam is passed.

8.3. Certificates will expire on December 31 of the appropriate calendar year, calculated in accordance with Section R317-11-9.

**R317-11-9. Renewal of Certification.**

9.1. Certification renewal is required every 3 years for all levels of certification.

9.2. ~~[Eligibility for renewal of certificates is based on continuous certification.]~~ A certified individual who renews a certificate in a timely manner continues to be eligible for certification without meeting new requirements unless the certification is suspended, revoked or annulled.

9.3. Renewal of a certificate may be obtained ~~[within]~~ at any time prior to ~~[12 months of]~~ certificate expiration by:

A. ~~[M]~~ making application to the ~~[Executive Secretary]~~ director along with payment of applicable fees; and

B. ~~[Evidence of successfully completing the refresher courses as provided by the Training Center]~~ successfully completing the required refresher course or courses provided by an approved training provider; or

C. providing with the application e ~~[E]~~ evidence of successfully completing other approved training ~~[obtained prior to certificate expiration that is approved by the Executive Secretary]~~.

**R317-11-10. Lapsed Certifications.**

10.1. Expired certifications may be reinstated within ~~[6]~~ six months after the expiration date by:

A. ~~[C]~~ completing the required refresher course ~~[+s]~~ or courses as provided by ~~[the Training Center]~~ an approved training provider, and

B. ~~[S]~~ submitting a renewal application and reinstatement fee to the ~~[D]~~ division.

10.2. After the reinstatement period, initial certification requirements must be met in order to be certified.

**R317-11-11. Exceptions.**

The ~~[Executive Secretary]~~ director ~~has~~ authority to consider exceptions to this rule upon written request. ~~[-]~~

**R317-11-12. Suspension, Revocation, or Annulment of Certification.**

12.1. Grounds for suspending, revoking, or annulling a person's certificate may be, but are not limited to, any of the following:

- A. [~~D~~] demonstrated disregard for the public health and safety;
- B. [~~M~~] misrepresentation or falsification of information or reports submitted to the [~~D~~] division;
- C. [~~E~~] cheating on a certification exam;
- D. [~~F~~] falsely obtaining or altering a certificate; or
- E. [~~I~~] incompetence, misconduct or [~~gross~~] significant negligence in the performance of work done pursuant to the certification.

12.2. Disciplinary action such as suspension, revocation, or annulment of certificate by the [~~Executive Secretary~~] director may result where it is shown that the circumstances and events relative to the work done pursuant to the certification were under the individual's jurisdiction and control. Circumstances beyond the control of the individual shall not be grounds for disciplinary action.

12.3. Any certificate not issued [~~through due process of~~] as specified in this rule will be annulled.

12.4. Recommendations may be made to the [~~Executive Secretary~~] director regarding the suspension, revocation, or annulment of a certificate. Prior to making any such recommendation, the individual shall be informed in writing of the reasons for such a recommendation. The individual shall be allowed an opportunity for an informal hearing before a review committee appointed by the [~~Executive Secretary~~] director. Any request for an informal hearing shall be made within 30 days of the date the notification is mailed.

12.5. Following an informal hearing, or the expiration of the period for requesting a hearing, the [~~Executive Secretary~~] director shall be notified of the final recommendation.

12.6. A challenge to the [~~Executive Secretary~~] director's determination may be made as provided in Rule [~~R317-9-3~~] R305-7.

**R317-11-13. Certification Requirements and Effective Dates.**

[~~After January 1, 2002, no~~] No person shall design, inspect, maintain, or conduct soil evaluations or percolation tests for an underground wastewater disposal system unless they hold current certification from the [~~Executive Secretary~~] director, except as exempted in Section R317-11-4.

**R317-11-14. Noncompliance.**

[~~14.1.—~~] Noncompliance with these [~~E~~] certification rules is a violation [~~of~~] under Section 19-5-~~[121]~~ 115 [~~Utah Code Annotated~~] and may be subject to enforcement by the director. [~~—~~]

~~14.2.—~~ Cases of noncompliance with this rule shall be referred to the ~~Executive Secretary.~~]

**KEY: waste water, occupational licensing, certification, onsite professional**

Date of Enactment or Last Substantive Amendment: [~~June 27, 2012~~] 2013  
Notice of Continuation: June 27, 2011  
Authorizing, and Implemented or Interpreted Law: 19-5-104; 19-5-106;  
19-5-121