

**Utah Waste Management and Radiation Control Board Action Item
Proposed changes to R311, Utah Underground Storage Tank Rules
Final Adoption and Change in Proposed Rule**

The Division of Environmental Response and Remediation (DERR) requests that the Utah Waste Management and Radiation Control Board approve proposed changes to the Utah Underground Storage Tank (UST) rules for final adoption and, for R311-203, a Change in Proposed Rule.

Background:

On September 8, 2016, the Board approved proposed changes to the Utah Underground Storage Tank rules for publication and public comment. The proposed changes incorporate by reference new Federal UST regulations that became effective on October 13, 2015, make changes to the Utah rules to administer the Federal regulations, simplify the Utah rules, and remove rule wording that is redundant or no longer applies.

The rules to be amended are:

R311-200, Underground Storage Tanks: Definitions.

R311-201, Underground Storage Tanks: Certification Programs and UST Operator Training.

R311-202, Underground Storage Tank Technical Standards.

R311-203, Underground Storage Tanks: Technical Standards.

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

R311-212, Administration of the Petroleum Storage Tank Loan Program.

Notice of the proposed changes and the public comment period was sent to UST owner/operators, certified individuals, and other persons interested in UST rulemaking, and was published in major newspapers throughout the state.

The proposed changes were published in the *Utah State Bulletin* on October 1, 2016. The public comment period was held October 1, 2016 to October 31, 2016, and a public hearing to receive comments on the proposed changes was held on October 17, 2016.

One comment was received during the public comment period. US EPA Region 8 commented on R311-203-7, the operator inspection rule, stating that subsection R311-203-7(c) may result in Utah's operator inspection rule being less stringent than the Federal regulations, thereby endangering Utah's State Program Approval. R311-203-7(c) provides for approval by the Division Director for a facility to have operator inspections conducted less frequently in situations where it is impractical to conduct the inspections every 30 days. Because the new Federal regulations require inspections every 30 days, keeping subsection (c) could result in Utah's rule being considered less stringent than the Federal regulations.

The Division requests that the Board approve a Change in Proposed Rule for R311-203, with Subsection R311-203-7(c) to be removed. If the Change in Proposed Rule is approved by the

Board, the change would be published in the Utah State Bulletin on December 1, 2016, and the rule could be effective 30 days later.

The text of the proposed change to R311-203 is attached, with the Change in Proposed Rule form that will be submitted to the Division of Administrative Rules. The previous proposed changes to R311-203 are shown as if they had become effective, and the new changes are shown in the rule text. Wording to be removed is struck out, and wording to be added is underlined.

Please note: Because the end of the public comment period is only a few days before the date the Board packet information is sent to the Board members, it is possible that a comment postmarked by October 31, 2016 could be received by the DERR after the Board packet is sent. If this occurs, the comment and a DERR staff response will be forwarded to Board members electronically before the November Board meeting.

Action Items:

1) The Division of Environmental Response and Remediation requests that the Utah Waste Management and Radiation Control Board adopt the proposed changes to R311-200, R311-201, R311-202, R311-206, and R311-212. It is requested that the effective date of the new rules be January 1, 2017.

2) The Division requests that the Board approve a Change in Proposed Rule for R311-203, with publication date to be December 1, 2016 and the effective date of the changed rule to be January 1, 2017.

NOTICE OF CHANGE IN PROPOSED RULE

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Office of Administrative Rules.

Rule Information

DAR file no: 40755 Date filed:
 State Admin Rule Filing Key: 158069
 Utah Admin. Code ref. (R no.): R311-203

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Environmental Response and Remediation

Room no.: First Floor

Building:

Street address 1: 195 N 1950 W

Street address 2:

City, state, zip: SALT LAKE CITY UT 84116-3085

Mailing address 1: PO BOX 144840

Mailing address 2:

City, state, zip: SALT LAKE CITY UT 84114-4840

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Gary Astin	801-536-4103	801-359-8853	gastin@utah.gov	<input type="checkbox"/>

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Underground Storage Tanks: Technical Standards.

Notice Type

3. Type of notice: Change in Proposed Rule
Changes DAR No.: 40755
(If you do not know the DAR no., call 801-538-3218.)

Rule Purpose

4. Purpose of the rule or reason for the change:
During public comment for proposed changes to R311-203, a comment was received that indicated that subsection R311-203-7(c) contains language that may conflict with requirements for Utah to maintain state program approval of its underground storage tank (UST) regulatory program. The conflicting language provides for underground storage tank operator inspections to be performed less frequently than every 30 days in situations where it is impractical to conduct the inspections every 30 days. The conflicting language is now removed from the rule to eliminate the possibility that it could cause Utah to lose state program approval.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.
 No Yes

Rule Summary

6. Summary of the rule or change:
Subsection R311-203-7(c) is removed from the rule.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No Yes

No cost or savings. The state, as an owner of USTs, has not been approved for a reduced inspection schedule for any of its UST facilities, so there will be no change in the state's inspections costs.

B) Local government:

Affected: No Yes

No cost or savings. No local governments that own USTs have been approved for a reduced inspection schedule for any of their UST facilities, so there will be no change in their inspections costs.

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

No cost or savings. No small businesses that own USTs have been approved for a reduced inspection schedule for any of their UST facilities, so there will be no change in their inspections costs.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

No cost or savings. No UST owners have been approved for a reduced inspection schedule for any of their UST facilities, so there will be no change in their inspections costs.

Compliance Cost Information

8. Compliance costs for affected persons:

No compliance costs. No UST owners have to date been approved for a reduced schedule of operator inspections, so there will be no cost for them to continue to perform inspections as they are already doing them. If an UST owner had received approval for a reduced inspection schedule, the cost required to begin performing the inspections every 30 days would depend on the number of additional inspections required. The most likely scenario would be a UST facility in a mountainous area, that is not easily accessed during the winter. If four additional inspections were required for the winter months, the increased cost would be approximately \$500 to \$700 per year, depending on the individual characteristics of the UST site and the available resources of the UST owner to provide access to the UST facility.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The fiscal impact of this rule change will be minor. There are a handful of UST sites in the state that are likely to be inaccessible or have another situation where a monthly inspection would be impractical. No tank owners have been granted an exemption from doing the inspections each month. Removing the ability to grant the exemption will only mean that UST owners and operators will continue to do the inspections monthly, so fiscal impacts to tank owners will be minimal.

B) Name and title of department head commenting on the fiscal impacts:

Alan Matheson, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

19-6-403, 19-6-105, 19-6-408

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by reference (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)

Publisher

Date Issued (mm/dd/yyyy)

Issue, or version (including partial dates)

ISBN Number

ISSN Number

Cost of Incorporated Reference

Adds, updates, removes-- SELECT ONE --

Comments

12. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 12/30/2016

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

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

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 01/01/2017

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
fees, petroleum, hazardous substances, underground storage tanks

File Information

15. Attach an RTF document containing the text of this rule change (filename):
No document is associated with this filing.

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.

Agency Authorization

Agency head or designee, and Brent Everett
title: Director

Date (mm/dd/yyyy): 11/01/2016

R311. Environmental Quality, Environmental Response and Remediation.

R311-203. Underground Storage Tanks: Technical Standards.

R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

- (a) The owner or operator of an underground storage tank shall notify the Director whenever:
- (1) new USTs are brought into use;
 - (2) the owner or operator changes;
 - (3) changes are made to the tank or piping system; and
 - (4) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed or upgraded.
- (b) All notifications shall be submitted on the current approved notification form.
- (c) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.
- (d) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:
- (1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or
 - (2) provide separate notification to the Director within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

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

original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Director an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(2).

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

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

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

(d) The Director shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

- (1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,
- (2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

(g) When the Director is notified of the existence of a previously un-registered regulated UST, the Director shall assess the registration fee for the current fiscal year. If the UST is properly permanently closed within 90 days of the notification of the existence of the UST, the Director may decline active collection of past-due registration fees, late payment penalties, and interest for previous fiscal years.

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

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

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

(3) another form approved by the Director.

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

(1) the form "Utah Containment Sump Test", or

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

(3) another form approved by the Director.

(d) When a sump sensor is used as an automatic line leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Director. The sensor shall be located as close as is practicable to the lowest portion of the sump.

(e) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the Director. The tester who performs the test shall provide the following information: location of at least three test points per tank, location of one remote test point for galvanic systems, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(f) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-6. Secondary Containment and Under-dispenser Containment.

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 and before January 1, 2017 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

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

(B) where the piping connects to a dispenser, or otherwise goes above-ground; and

(C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

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

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

(A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or

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

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

(A) be liquid-tight on its sides, bottom, and at all penetrations;

(B) be compatible with the substance conveyed by the piping; and

(C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Director documentation to show that the requirements of Subsections (a) and (b) do not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

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

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

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

(A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;

(B) water lines, processing tanks, and water storage tanks; and

(C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b) apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

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

R311-203-7. Operator Inspections.

(a) Owners and operators shall perform periodic inspections in accordance with 40 CFR 280.36. Inspections shall be conducted by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.

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

~~(c) [The Director may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.~~

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

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

R311-203-8. Unattended facilities.

(a) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

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

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

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

Date of Enactment or Last Substantive Amendment: February 14, 2011

Notice of Continuation: April 10, 2012

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