

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

EnergySolutions Petition for Rulemaking

November 10, 2016

<p>What is the issue before the Board?</p>	<p>On October 12, 2016, EnergySolutions submitted a petition to initiate rulemaking to repeal Utah Administrative Code (UAC) R313-25 and reenact UAC R313-25 by incorporating 10 CFR 61 by reference. (A copy of the Petition is included in the November 10, 2016 Board Packet).</p>
<p>What is the historical background or context for this issue?</p>	<p>The Utah Administrative Rulemaking Act (Utah Code Ann. 63G-3-101, <i>et seq.</i>) provides that an interested person/party may petition a rulemaking agency to make, amend, or repeal a rule. (Utah Code Ann. 63G-3-601(2)) The Utah Administrative Code (UAC) establishes additional requirements for rulemaking petitions. (<i>See R15-2.</i>)</p> <p><u>REQUIRED BOARD ACTIONS</u> (Utah Code Ann. 63G-3-601(6), R15-2-3 & R15-2-5)</p> <p>As the “agency” that has been granted rulemaking authority by the Legislature, the Board is required to:</p> <ul style="list-style-type: none"> • Record the date the petition is received; • Review and consider the petition; • Within 45 days of the submission of the petition, place the petition on its agenda for review; • Within 80 days of the submission of the petition, write a response to the petitioner stating either: <ul style="list-style-type: none"> ○ the petition is denied and the reasons for denial; or ○ the date when the Board is initiating rulemaking proceedings consistent with the intent of the petition. • Retain the petition and a copy of the Board's response as part of the administrative record; and • Mail copies of its decision to all persons who petitioned for a rule change. <p>Additionally, the Board may (R15-2-5(2)):</p> <ul style="list-style-type: none"> • Interview the petitioner; • Hold a public hearing on the petition; or • Take any action the Board, in its judgment, deems necessary to provide the petition due consideration.
<p>What is the governing statutory or regulatory citation?</p>	<p>Utah Code Ann. 63G-3-601 and Utah Administrative Code R15-2.</p>
<p>Is Board action required?</p>	<p>No. This is an informational item only. The Board is only being notified of the petition as required by statute.</p>
<p>What is the Division Director’s recommendation?</p>	<p>The petition raises significant issues that require detailed analysis and discussion. The Director will make a recommendation in the December Board Meeting.</p>

Where can more information be obtained?

Questions may be directed to Ralph Bohn at (801) 536-0212 or Rusty Lundberg at (801) 536-4257.

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DEPARTMENT OF
ENVIRONMENTAL QUALITY

CD16-0207

October 12, 2016

Mr. Scott T. Anderson
Executive Secretary
Utah Board of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, Utah 84114-4880

DRC-2016-010559

Subject: Utah Administrative Code R313-25; **Petition to Initiate Rulemaking**

Mr. Anderson:

Pursuant to Utah Code Ann. § 63G-3-601, EnergySolutions hereby submits a Petition to Initiate Rulemaking to the Waste Management and Radiation Control Board (Board) to repeal and reenact Utah Administrative Code (UAC) R313-25 and adopt by reference 10 CFR Part 61. As promulgated in § 63G-3-601, the Board is required to place this Petition on its agenda for review and either initiate rulemaking proceedings or deny the petition in writing within 60 days of submittal of the petition. As such, this letter sets forth the statement of the jurisdiction of the Board to consider this Petition to repeal and reenact UAC R313-25, as required by Utah Code Ann. § 63G-3-601(4) and explains the basis for the Petition.

The Petition to repeal and reenact UAC R313-25 is within the jurisdiction of the Board under Utah Code Annotated § 19-3-104(4) which authorizes the Board to make rules “*to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government.*” The proposed Petition brings UAC R313-25 into alignment with corresponding U.S. Nuclear Regulatory Commission (NRC) rules. Specifically, the Petition proposes replacement of UAC R313-25 and adoption of Chapter 61 of Title 10 from the Code of Federal Regulations by reference. This action will assure that as 10 CFR Part 61 is amended (amendments are currently under consideration), the Utah rules will automatically be in compliance with federal rules, without further Board action. Additionally, this proposed Petition will bring the Division into compliance with Senate Bill 173.

The primary purpose and reasoning for EnergySolutions Petition is as follows:

1. Senate Bill 173 was signed into law on March 31, 2015. Utah Code Ann. § 63G-3-301(13)(b) requires the Division to “*initiate rulemaking proceedings no later*

than 180 days after the effective date of the statutory provision that specifically requires the rulemaking". The Petition's proposed revisions address the requirements of Senate Bill 173 and bring the Board into compliance with these statutory requirements.

2. The current UAC R313-25 rules, adopted by the legacy Board of Radiation Control (dissolved and replaced in 2015 with the Board of Waste Management and Radiation Control), are "more stringent" than corresponding federal regulations. These rules, therefore, are not in compliance with Utah Code Ann. § 19-3-104(7)(a), as the adoption of these rules did not following the requirements found in Utah Code Ann. § 19-3-104(8)(a). This creates undo and illegal regulatory burden on EnergySolutions and should be remedied by the current Board. The proposed repeal and reenactment of UACR313-25 and adoption by reference of 10 CFR Part 61 will assure that state rules are consistent with, but not more stringent than the corresponding federal rules.

Below is the statutory language that governs rulemaking, followed by specific examples of how the requirements of UAC R313-25 are more stringent than corresponding federal regulations.

Utah Code Annotated § 19-3-104(7)(a) states:

"Except as provided in Subsection (8), and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances." [emphasis added]

Similarly, Utah Code Annotated § 19-5-105(5) states:

"Except as provided in Subsections (2) and (3), no rule that the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations." [emphasis added]

Specific examples of where the regulations in UAC R313-25 are more stringent than the corresponding federal regulations include:

1. UAC R313-25-2: Federal regulatory definition of an *Inadvertent intruder* in 10 CFR 61.2 is considered a person “*who might occupy the disposal site after closure and engage in normal activities....*” By comparison, UAC R313-25-2 considers an *Inadvertent Intruder* as “*a person who may enter the disposal site after closure and engage in activities unrelated to post closure management....*” Design and performance requirements to protect individuals from inadvertently “*entering*” and “*engaging in activities unrelated to post closure management*” at the disposal site are significantly more stringent than those required to protect inadvertent occupation of the disposal site “*and engage in normal activity*”.
2. UAC R313-25-9: Federal regulations promulgated in 10 CFR 61.13 *Technical Analyses* require licensees to provide specific technical information demonstrating (a) protection of the general population, (b) protection of individuals from inadvertent intrusion, (c) protection of individuals during operations, and (d) long-term stability of the disposal site without ongoing active maintenance. UAC R313-25-9 includes additional requirements. In UAC R313-25-9(1) through UAC R313-25-9(3) and UAC R313-25-9(5) there are requirements to perform site-specific analysis for waste not included in the Draft Environmental Impact Statement for Class A waste, or additional analyses if the waste is likely to result in greater than 10% of the dose limits in UAC R313-25-19 in the time period when peak dose would occur. This additional analysis is more stringent than required by corresponding federal regulations. In promulgating UAC R313-25-9, the board did not make a finding as per UAC 19-3-1048(a) and (b) allowing more stringent rules.
3. UAC R313-25-20: Federal regulations require a licensee’s demonstration of the protection of the general population to an “*annual dose exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public.*” 10 CFR 61.41. By comparison, UAC R313-25-20 more stringently requires demonstration that “*[n]o greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater.*”
4. UAC R313-25-27(4): In addition to several requirements associated with environmental monitoring, UAC R313-25-27(4) requires licensees to demonstrate that they have additional plans not required by NRC.

5. UAC R313-25: By not incorporating NRC requirement 10 CFR 61.58 into UACR313-25, Utah licensees are held to more stringent standards because NRC's alternative requirements for waste classification and characteristics are not available.
6. UAC R313-25-33: requires licensees to maintain original, reproduced copies, or microfilm records, while 10 CFR 61.80 acknowledges and incorporates technological advances in record archival by amending 10 CFR 61.80(c) with

“The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.”

As part of its current 10 CFR Part 61 rulemaking, NRC has deemed the current Part 61 rules as protective to human health and the environment. This has been stated by the NRC in various stages of the rulemaking, and was specifically stated by the NRC in letters to the Utah Division of Radiation Control, dated January 21, 2010¹ and August 6, 2010². The State of Utah has not met the requirements found in Utah Code Annotated § 19-3-104(8), specifically § 19-3-104(8)(b) which requires the State to publish the evaluation of the public health and environmental information and studies that form the basis for rules that are more stringent than the Federal counterpart.

A secondary and more pragmatic reason for the repeal of the rules are the significant changes to 10 CFR Part 61 currently being promulgated by the NRC. While not final, the Board will be required to make significant changes to UAC R313-25 in order to conform to the new revision of Part 61. It would be prudent to adopt 10 CFR Part 61 in total so that the more extensive Part 61 changes can be incorporated by reference.

¹ Reis, Terence. “NRC Review of Proposed Changes to the Utah Regulations R313-25-8” Letter from Terrence Reis, Deputy Director of the Division of Material Safety and State Agreements, U.S. Nuclear Regulatory Commission to Dane L. Finerfrock, Director of the Utah Division of Radiation Control, January 21, 2010.

² Reis, Terence. “NRC Review of the Final Changes to the Utah Regulations R313-25-8” Letter from Terrence Reis, Deputy Director of the Division of Material Safety and State Agreements, U.S. Nuclear Regulatory Commission to Rusty Lundberg, Executive Secretary of the Utah Division of Radiation Control, August 6, 2010.

Rule repeal and reenactment with reference to comparable federal requirement has been a long-standing common practice by the Board. For example, in March 2016, the Board approved commencement of a Notice of Continuation (five-year review) of Utah Administrative Code R315. At the conclusion of its review, the Board fully repealed Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50 and then replaced them with reference to corresponding U.S. Environmental Protection Agency requirements.

This Petition to repeal UAC R313-25 and reenact it with reference to 10 CFR 61 also addresses changes made in the 2013 Utah Legislature to UAC R313-25-6 via House Bill 124. That language has been retained in the replacement text proposed in the attached pages. Revisions to the statutory and regulatory requirements of House Bill 124 have been amended to be consistent with the approval process promulgated for State-issued Part B Permit modification requests in Utah Administrative Code R315-270-42(b)(6)(iii) (which is equivalent to U.S. EPA regulations in 40 CFR 270.42(b)(6)(iii)). This hazardous waste permit modification provision allows that “[i]f the Director fails to make one of the decisions...by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described....” Without an equivalent provision in UAC R313-25, there is no controlling provision enforcing the licensing action time requirements currently promulgated in UAC R313-25-6 (rendering the statutory provisions revised by House Bill 124 in 2013 ineffectual). Similarly, changes created by the 2015 Utah Legislature to UAC R313-25-31 via Senate Bill 173 have been retained in the reenactment text hereto attached.

Should the Board deny this Petition to repeal and reenact UAC R313-25 as currently promulgated, EnergySolutions requests that the Board prepare “a reasoned justification for continuation of the rule, including reasons why the [Board] disagrees with comments in opposition to the rule,” as required by Utah Code Annotated § 63G-3-305. I look forward to working with the Board on this Petition.

Please contact me at 801-649-2000 if there are any comments or questions.

Sincerely,



Dan Shrum

Oct 12 2016 2:26 PM



Daniel B. Shrum
Senior Vice President
Regulatory Affairs

cc: Ralph Bohn, DWMRC
Rusty Lundberg, DWMRC

Enclosure

Request to Initiate Rulemaking to R313-25

Utah Code Ann. § 63G-3-601(4) requires: *“A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.”*

The petitioned repeal and reenactment of Utah Administrative Code (UAC) R313-25 is within the jurisdiction of the Board under Utah Code Annotated §§ 19-1-106 and 19-3-104(4). Under those provisions of the Radiation Control Act, the Board may make rules *“that are necessary to implement the provisions of the Radiation Control Act”* (§19-6-104(1)(a)), to control exposure to sources of radiation (§19-3-104(4)(a)), and to meet federal legal requirements to ensure that the Utah radiation control program is qualified to maintain primacy from the federal government (§ 19-3-104(4)(b)).

The petitioned repeal and reenactment brings R313-25 into alignment with the requirements of Senate Bill 173, signed into law on March 31, 2015. Utah Code Annotated §63G-3-301(13)(b) requires the Division to *“initiate rulemaking proceedings not later than 180 days after the effective date of the statutory provisions that specifically requires the rulemaking”*. The proposed reenactment addresses Senate Bill 173 and brings the Board into compliance with these statutory requirements and corresponding Nuclear Regulatory Commission (“NRC”) requirement.

Finally, the petitioned repeal and reenactment brings UAC R313-25 into compliance with Utah Code Annotated §§ 19-3-104(7) and (8), which prohibits the adoption by the Board of any *“rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances”* unless the Board *“makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.”* The petitioned repeal and reenactment will reduce the circumstances under which a licensee will be required to comply with requirements that are more stringent than those found in the corresponding NRC regulations or policies.

Replacement of UAC R313-25 with Reference to 10 CFR 61

R313. Environmental Quality, Waste Management and Radiation Control, Radiation. R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.

For the purposes of Rule R313-25, 10 CFR 61.1(a) through 60.54 and 61.56(a) through 61.84 are incorporated by reference with the following clarifications or exceptions:

(1) The substitution of the following:

- (a) "Director" for reference to "Commission"
- (b) "Rule R313-24-4" for reference to "§ 40.4 (a-1)" in 10 CFR 61.1(b)(2)
- (c) "Rule R313-15" for references to "part 20"
- (d) "Division enforcement action" for references to "NRC enforcement action"
- (e) "Division enforcement action" for references to "NRC enforcement action"
- (f) "Division of Waste Management and Radiation Control" for references to "Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission."
- (g) "State of Utah" for references to "United States of America"
- (h) "Director, Division of Waste Management and Radiation Control, 195 North 1950 West, Salt Lake City, Utah 84114-4880 " for references to " Document Control Desk; Director, Office of Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland"
- (i) "Attorney General" for references to "General Counsel"
- (j) "Rule R313-37" for references to "Part 73"
- (k) "Rule R313-15-1009" for references to "10 CFR 61.55"

(l) "§ 61.6(a)" for references to "§ 61.6"

(m) "Disposal site means that portion of a land disposal facility which is licensed for disposal of waste. It consists of disposal units and a buffer zone." for reference in § 61.2 to "Disposal site means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone."

(2) Delete the following:

(a) "as provided for in part 60 or 63 of this chapter" from 10 CFR 61.1(b)(1)

(b) "Commission means the Nuclear Regulatory Commission or its duly authorized representatives" from 10 CFR 61.2

(c) 10 CFR 61.8(a)

(3) Insert the following as § 61.6(b). *Director Review of Application:*

"(1) Unless the Director determines that there is sufficient technical or regulatory justification for a denial, the Director shall review and approve each approval application within the time allotted to determine that it complies with applicable statutory and regulatory requirements. Approval applications will be categorized as Category 1, 2, 3 and 4 applications, as provided in § 61.6(b)(2) through (5). Absent denial by the Director, the approval application shall be judged as having been approved at the expiration of the applicable allotted review time.

(2) Category 1 applications.

(a) A Category 1 application is an application that:

(i) is administrative in nature;

(ii) requires limited scrutiny by the Director; and

(iii) does not require public comment.

(b) Examples of a Category 1 application include an application to:

(i) correct typographical errors;

(ii) Change the name, address, or phone number of persons or agencies identified in the license or permit;

(iii) change the procedures or location for maintaining records;

(iv) Director's financial assurance determinations of financial assurance cost estimates prepared in accordance with R313-25-32(1)(d)(ii)(B); or

(v) extend the date for compliance with a permit or license requirement by no more than 120 days.

(c) (i) The Director shall complete review of a Category 1 application within a Category 1 application's allotted review time of 30 days after the day on which the Director Receives the application.

(ii) The period described in § 61.6(b)(2)(c)(i) shall not be tolled.

(3) Category 2 applications:

(a) A Category 2 application is one that is not a Category 1, 3 or 4 application.

(b) Examples of a Category 2 application include:

(i) Increase in process, storage, or disposal capacity

(ii) Change engineering design, construction, or process controls;

(iii) Approve a proposed corrective action plan;

(iv) Director's financial assurance determinations of financial assurance cost estimates prepared in accordance with R313-25-32(1)(d)(i) or R313-25-32(1)(d)(ii)(A); or

(iv) Transfer direct control of a license or groundwater permit.

(c) (i) The Director shall complete review of a Category 2 application within a Category 2 application's allotted review time of 180 days after the day on which the Director receives the application.

(ii) The period described in § 61.6(b)(3)(c)(i) shall be tolled as provided in § 61.6(b)(7).

(4) Category 3 applications.

(a) Category 3 application is an application for:

(i) a radioactive waste license renewal;

(ii) a groundwater permit renewal;

(iii) an amendment to an existing radioactive waste license or groundwater permit to allow a new disposal cell;

(iv) an amendment to an existing radioactive waste license or groundwater permit that would allow the facility to eliminate groundwater monitoring; or

(v) approval of a radioactive waste disposal facility closure plan.

(b) (i) The Director shall complete review of a Category 3 application within a Category 3 application's allotted review time of 365 days after the day on which the Director receives the application.

(ii) The period described in § 61.6(b)(4)(b)(i) shall be tolled as provided in § 61.6(b)(7).

(5) Category 4 applications.

(a) A Category 4 application is an application for:

(i) a new radioactive waste license; or

(ii) a new groundwater permit.

(b) (i) The Director shall complete review of a Category 4 application within a Category 4 application's allotted review time of 540 days after the day on which the Director receives the application.

(ii) The period described in § 61.6(b)(5)(b)(i) shall be tolled as provided in § 61.6(b)(7).

(6) (a) Within 60 days after the day on which the Director receives a Category 2, 3 or 4 approval application, the Director shall determine whether the application is complete and contains all the information necessary to process it for approval and make a finding by issuance of a written:

(i) notice of completeness to the applicant; or

(ii) notice of deficiency to the applicant, including a list of the additional information necessary to complete the application.

(b) The Director shall review written information submitted in response to a notice of deficiency within 30 days after the day on which the Director receives the supplemental information and shall again follow the procedures specified in § 61.6(b)(1)(a).

(c) If a document that is submitted as an application is substantially deficient, the Director may determine that it does not qualify as an application. Any such determination shall be made within 45 days of the document's submission and will include the Director's written findings.

(7) Tolling Periods. The periods specified for the Director's review and approval or denial under § 61.6(b)(3)(c)(i), (4)(b)(i), and (5)(b)(i) shall be tolled:

(a) while an owner or operator of a facility responds to the Director's request for information;

(b) during a public comment period not to exceed 60 calendar days; and

(c) while the federal government reviews the application.

(8) Before expiration of the allotted review time, the Director shall prepare a detailed written explanation of the technical and regulatory basis for the Director's approval or denial of an approval application. If absent such written explanation at the expiration of the allotted review time, an approval application will be deemed as having been approved without finding."

(4) Insert the following as § 61.62. *Funding for Disposal Site Closure and Stabilization:*

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

- (a) decontamination or dismantlement of land disposal facility structures and disturbed lands in all areas subject to the licensed or permitted portions of the facility, and
- (b) closure and stabilization of the licensed disposal embankment(s) so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. The Director shall annually make a financial assurance determination that the approved cost estimates reflect the Director approved plan for the licensed disposal unit(s) closure and stabilization and decontamination or dismantlement of land disposal facility structures in all areas subject to the licensed or permitted portions of the facility. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.
- (c) dismantlement and final license approved radiation survey of above-ground facility structures not subject to the licensed or permitted portions of the facility, as determined by mutual agreement between the Director and the applicant, that may present an attractant nuisance for potential inadvertent intruders.
- (d) At the option of the applicant, the cost estimates shall be based on:
 - (i) an annual calculation using the most recent edition of RS Means Heavy Construction Cost Data and an indirect cost multiplier agreed upon between the applicant, licensee or permittee and the Director; or
 - (ii) (A) for an initial financial assurance cost estimation determination and for each financial assurance cost estimation at the time of license renewal thereafter, a certified competitive site-specific estimate to address the requirements of R313-25-31(1)(a) through R313-25-31(c), where the preparer has certified that the financial assurance cost estimation has been prepared in conformance with all applicable federal, state, and local requirements; and

(B) for each year between the initial financial assurance cost estimate determination and license renewal financial assurance cost estimate determination found in Section R313-25-31(1)(d)(ii)(A), an annual inflation adjustment to the previous year's financial assurance cost estimation using the Gross Domestic Product Implicit Price Deflator of the Bureau of Economic Analysis, United States Department of Commerce, calculated by dividing the latest annual deflator by the deflator for the previous year and an Professional Engineering Analysis of significant changes in the licensed disposal unit(s) and other areas subject to the licensed or permitted portions of the facility.

(2) The Director will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Director will accept these arrangements only if they are considered adequate to satisfy the requirements of Section R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the licensed disposal unit(s) is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety mechanism shall be annually reviewed by the Director to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's surety liability shall change in accordance with the predicted costs of future closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal unit(s) that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Director; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Director, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Director include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Director. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Director, and the license has been transferred to the site owner.

(9) If the Director and applicant do not agree on a financial assurance determination made by the Director, the licensee or permittee may appeal the determination in:

(a) an arbitration proceeding subject to Title 78B, Chapter 11, Utah Uniform Arbitration Act, with the costs of the arbitration split equally between the licensee or permittee and the Division, if both the licensee or permittee and the Director agree in writing to arbitration; or

(b) a special adjudicative proceeding under Title 19, Chapter 1, Section 301.5."

(5) Insert the following in § 61.2. Definitions:

"Disturbed lands" means the portions of the licensed disposal site other than disposal unit(s) that are not in native or natural form due to licensed or permitted operations.

"Financial assurance determination" means a decision on whether a facility, site, plan, party, broker, owner, operator, generator, or permittee has met financial assurance or financial responsibility requirements as determined by the Director of the Division of Waste Management and Radiation Control under the authority of Title 19, Chapter 3.