

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD**  
**Executive Summary**  
**Final Adoption of Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273**  
**April 14, 2016**

<b>What is the issue before the Board?</b>	The Board is being asked to adopt Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273 and set an effective date of April 15, 2016.
<b>What is the historical background or context for this issue?</b>	<p>In the January Board meeting, the Board approved the rules listed above for publication in the Utah Bulletin to start a 30-day public comment period. The proposed rules were published in the February 1, 2016 Bulletin and the comment period ended March 2, 2016,</p> <p>Two commenters made comments on rules R315-124, R315-260 and R315-261. The comments and the Division’s response to the comments are attached.</p> <p>In addition, the proposed rules were reviewed a second time by Division staff. Rules R315-124, 262, R315-264 and R315-273 were found to have sections that required correction.</p> <p>The Division of Administrative Rules classifies rule changes as substantive and nonsubstantive. Nonsubstantive changes can be made without public comment and are not published in the Bulletin. All nonsubstantive changes that were found by the Division staff review and from public comments have been made. Substantive changes that are needed to address comments and substantive changes resulting from staff review will be addressed in a separate Board action request.</p>
<b>What is the governing statutory or regulatory citation?</b>	19-6-104(3)(d) and 19-6-106 of the Utah Code Annotated provide rulemaking authority for the Board.
<b>Is Board action required?</b>	Yes. Board approval is required to adopt the rules and set an effective date.
<b>What is the Division Director’s recommendation?</b>	The Director recommends that the Board adopt rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273 and set an effective date of April 15, 2016.
<b>Where can more information be obtained?</b>	For more information, contact Ralph Bohn at (801) 536-0212 or by email at rbohn@utah.gov.



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DEHW-2016-007001

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March 1, 2016

*Via email and Hand Delivered*

Scott Anderson, Director  
Utah Division of Waste Management and Radiation Control  
195 North 1950 West  
Salt Lake City, UT 84116-3097

**Re: UIENC Comments on Proposed Revisions to State Hazardous Waste Rules,  
DAR File Nos. 40105 to 40130**

Dear Mr. Anderson

This firm represents the Utah Industry Environmental Coalition (UIENC). We appreciate the opportunity to comment on the proposed revisions to state hazardous waste rules, referenced above. We offer the following comments on the proposal.

**1. New numbering system**

We commend the Division for adopting a new numbering system for state hazardous waste rules. We believe the proposal to track the numbering system used by EPA will improve the state rules and make it much easier to find state counterparts to EPA rules. However, this is a formidable task consisting of 470 pages of proposed changes and it is important to get these changes right. We have not attempted a line-by-line review to ensure the proposed changes are consistent internally and with counterpart federal rules, but we are aware of a number of errors.<sup>1</sup> We urge the Division to correct those errors, carefully proof the rules to identify and correct any additional errors, and then re-propose the rules.

**2. Procedures for Decisionmaking**

We have several comments and concerns with proposed Rule R315-124 (Procedures for Decisionmaking).

<sup>1</sup> Please see comments on these rules by UIENC member Kennecott Utah Copper, including the errata sheet attached to those comments. We hereby incorporate those comments by reference.

Scott Anderson, Director  
March 1, 2016  
Page Two

First, proposed Section R315-124-1 (Applicability) states: “*Unless otherwise stated in Rules R315-17, 101, 102, 260 through 266, 268, 270, or 273, Rule R315-124 applies to all actions by the Director taken under the rules listed above.*” Given that Rule R315-124 concerns hazardous waste permit decisionmaking procedures, the meaning and applicability of these procedures to the referenced Rules is unclear. We suggest that this subsection is unnecessary. At a minimum, we request that the agency clarify the intended meaning of this subsection in its response to comments.

Second, proposed section R315-124-34 (Public Participation) states:

*“In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director shall publish notice of and provide at least 30 days public comment on any proposed settlement of any enforcement action.”* (Emphasis added)

We believe it is inappropriate for the Director, by rule, to bar himself from opposing permissive intervention. Utah Code Ann. 19-1-301.5(7) establishes requirements a petitioner must satisfy before it may intervene. The language of proposed section R315-124-34 presumably would prevent the Director from challenging intervention by a petitioner who did not meet those requirements. We request that this provision be changed to eliminate the bar on opposing inappropriate interventions.

It also seems inappropriate and unnecessary to require public comment for “any proposed settlement of any enforcement action.” Utah Code Ann. 19-6-104(3)(f) requires settlements negotiated by the Director of DWMRC that require a civil penalty of \$25,000 or more to be reviewed and approved by the Waste Management and Radiation Control Board. By requiring Board approval, the statute necessitates a public hearing connected to the Board’s review. We suggest that settlements less than \$25,000 should not require public comment.

### **3. Proposed definitions for R315-101**

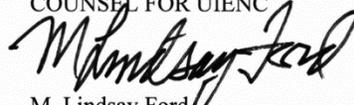
Rule R315-260-12 (Definitions for Rule 315-101) would add new definitions for Rule R315-101 (Cleanup Action and Risk-Based Closure Standards), but the current version of R315-101 does not use those definitions and the agency has not (yet) proposed changes to R315-101 that use those definitions. The proposed definitions, therefore, are inconsistent with current requirements at R315-101. We urge the Division to eliminate subsection R315-260-12 until such time as it adopts changes to Rule R315-101.

Scott Anderson, Director  
March 1, 2016  
Page Three

Thank you again for the opportunity to comment.

Very truly yours,

PARSONS BEHLE & LATIMER  
COUNSEL FOR UIENC



M. Lindsay Ford  
Attorney at Law

cc: Ralph Bohn

## **Division of Waste Management and Radiation Control Response to Comments on Proposed Rules R315-124 and R315-260**

The following are responses to comments received from Parsons Behle and Latimer submitted in behalf of the Utah Industry Environmental Coalition. The text of the comment is given in full followed by the Division's response.

### Comment

We commend the Division for adopting a new numbering system for state hazardous waste rules. We believe the proposal to track the numbering system used by EPA will improve the state rules and make it much easier to find state counterparts to EPA rules. However, this is a formidable task consisting of 470 pages of proposed changes and it is important to get these changes right. We have not attempted a line-by-line review to ensure the proposed changes are consistent internally and with counterpart federal rules, but we are aware of a number of errors. We urge the Division to correct those errors, carefully proof the rules to identify and correct any additional errors, and then re-propose the rules.

### Response

The Director acknowledges that changing the numbering system for all hazardous waste rules is a complicated project. In response to this comment, the Director conducted a second review of the newly proposed rules to correct both substantive and non-substantive errors. In addition to this second review, these rules, when adopted, will be sent to EPA for review as part of an authorization request. EPA will conduct a word for word comparison of the Utah rules and the federal rules. Any errors that are found in EPA's review will be reported to the Director and corrections will be made through the normal rule modification process. For these reasons, the Director does not believe it is necessary to re-propose these rules as requested by the commenter.

### Comment

First, proposed Section R315-124-1 (Applicability) states: *"Unless otherwise stated in Rules R315-17, 101, 102, 260 through 266, 268, 270, or 273, Rule R315-124 applies to all actions by the Director taken under the rules listed above."* Given that Rule R315-124 concerns hazardous waste permit decisionmaking procedures, the meaning and applicability of these procedures to the referenced Rules is unclear. We suggest that this subsection is unnecessary. At a minimum, we request that the agency clarify the intended meaning of this subsection in its response to comments.

### Response

Rule R315-124 applies to the Director's decision-making process for the entire hazardous waste program, not just to the permitting part of the program. The Director believes it is appropriate for the Board to identify decision-making procedures and that it is appropriate to consolidate those procedures in R315-124 where feasible. Where other decision-making procedures are appropriate for a specific rule, those procedures are stated in that rule. No change will be made in the proposed rule.

## Comment

Second, proposed section R315-124-34 (Public Participation) states:

”In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director shall publish notice of and provide at least 30 days public comment on any proposed settlement of any enforcement action.”(Emphasis added)

We believe it is inappropriate for the Director, by rule, to bar himself from opposing permissive intervention. Utah Code Ann. 19-1-301.5(7) establishes requirements a petitioner must satisfy before it may intervene. The language of proposed section R315-124-34 presumably would prevent the Director from challenging intervention by a petitioner who did not meet those requirements. We request that this provision be changed to eliminate the bar on opposing inappropriate interventions.

It also seems inappropriate and unnecessary to require public comment for "any proposed settlement of any enforcement action." Utah Code Ann. 19-6-104(3)(f) requires settlements negotiated by the Director of DWMRC that require a civil penalty of \$25,000 or more to be reviewed and approved by the Waste Management and Radiation Control Board. By requiring Board approval, the statute necessitates a public hearing connected to the Board's review. We suggest that settlements less than \$25,000 should not require public comment.

## Response

R315-4-10 currently reads as follows:

“In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Director will investigate and provide written response to all citizen complaints duly submitted. In addition, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director will publish notice of and provide at least 30 days for public comment on any proposed settlement of any proposed settlement of any enforcement action.”

The language in R315-124-34 needs to have an additional statement that the Director will investigate and respond to complaints. With the additional language, the language in the pertinent portion of the current rule and the proposed rule are the same. 40 CFR Part 271 outlines the requirements that a state must meet to receive authorization for the hazardous waste program. 40 CFR 271.16(d) requires a state administering the hazardous waste program to provide for public participation in the enforcement process. The state may either provide for intervention as a right under 40CFR 271.16(d)(1) or give assurance under 40CFR 271.16(d)(2)(ii) that it will not oppose the permissive intervention of an interested party. The Board, in adopting the language that is in the current rule, followed the second option.

Under 40 CFR 271.16(d)(2)(iii), the state must publish notice and allow at least 30 days for the public to comment on all proposed enforcement settlements.

Both areas the commenter requested be removed are required for authorization. Therefore, the commenter's request cannot be granted.

### Comment

Proposed definitions for R315-101

Rule R315-260-12 (Definitions for Rule 315-101) would add new definitions for Rule R315-101 (Cleanup Action and Risk-Based Closure Standards), but the current version of R315-101 does not use those definitions and the agency has not (yet) proposed changes to R315-101 that use those definitions. The proposed definitions, therefore, are inconsistent with current requirements at R315-101. We urge the Division to eliminate subsection R315-260-12 until such time as it adopts changes to Rule R315-101.

### Response

The commenter is correct. The definitions found in proposed R315-260-12 will be removed and the definitions found in current R315-1-1(h)(1) through (10) will be added. The Director expects to propose revisions to R315-101 in the near future. Until changes to R315-101 are proposed and accepted by the Board, the definitions for the current R315-101 must be retained. The rule will be modified and a "Change in Proposed Rule" presented to the Board.

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Steve Schnoor  
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Received by Waste Management and  
Radiation Control  
March 2, 2016

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Div of Waste Management  
and Radiation Control

MAR 02 2016

March 1, 2016

Mr. Scott Anderson, Director  
Utah Division of Waste Management and Radiation Control  
195 North 1950 West  
Salt Lake City, UT 84116-3097

Re: Proposed Revisions to State Hazardous Waste Rules, DAR File Nos.  
40105 to 40130

Rio Tinto Kennecott Copper (Kennecott) appreciates the opportunity to comment on the proposed revisions to State hazardous waste rules, referenced above. The following comments, including errata, are provided. Additionally, Kennecott supports the comments provided by the Utah Industry Environmental Coalition on the proposed revisions.

A general comment is that a greater degree of clarity and justification be provided for those new and changed definitions not required by changes to corresponding Federal rule.

Given the number of errors and other substantive issues, Kennecott is requesting the Division re-propose the entire rule for an additional 30-day comment period.

Kennecott is confused about UDWM&RC website language, and thus requests the Division confirm no additional R315 rules have been finalized recently without proper notice and comment.

**R315-260 contains many minor errors.**

Kennecott understands that proposed R315-260 Hazardous Waste Management System essentially copies 40 CFR 260 into the Utah rules with definitions currently in R315-1 would be moved to R315-260-10 and added to the federal definitions.

The following comments are offered;

R315-260-10(c)(25)(i)(B) has a typo – “40 CFR 27” should read “40 CFR 271”.

R315-260-10(c)(39) should refer to “Sections R315-260-20 and 21”, not Sections R315-260-21 and 22”.

R315-260-10(c)(43)(ii) “Utah reference” needs to be supplied.

R315-260-10(c)(54) contains an apparently erroneous reference -- “R315-260-10(c)(59)” should be “R315-260-10(c)(54)”, as the federal definition says “this paragraph”, meaning the definition itself.

R315-260-10(c)(101) contains an apparently erroneous reference -- “R315-260-10(c)(107)(i) or (ii)” should be “R315-260-10(c)(101)(i) or (ii)”, as the federal definition says “this definition”.

“Director”, “Disposal”, “Hazardous Waste”, “Solid waste” are not defined in the rule, but are understood to be defined in the Statute, 19-6-102.

Clarification is requested as to the missing definitions of “Military munitions” and “Performance Track member facility” which are defined in the federal rule, but not in the State rule.

Kennecott acknowledges the addition of the definition of “Solid Waste Management Unit” at (R315-260-10(c)(121)

Kennecott acknowledges the addition of the definition of “spent material” at R315-260-10(c)(125) same as in 40 CFR 261

Kennecott acknowledges the addition of the R315-260-10(c)(149) that adds lamps, antifreeze and aerosol cans to the federal definition of Universal waste.

#### **R315-260-12. Definitions for Rule R315-101.**

Kennecott understands that R315-260-12 is a revised version of current R315-1-1(h).

Kennecott acknowledges the definitions (1) “Acceptable Risk” and (2) “Appropriate Site Management Activities” are new, but reflect language already in current R315-101.

Definitions (3) “Area of contamination” and (4) “The boundary” are the same as current R315-1-1(h)(2).

Definition (5) “Cleanup” is new and generally believes this to be reasonable.

Kennecott acknowledges the definition (6) “Concentration Term . . .” is extensively revised from that in the current R315-1-1(h)(1). An explanation of these revisions is requested.

Kennecott acknowledges the definition (7) “Contaminate” is essentially the same as current R315-1-1(h)(3).

Kennecott understands definitions (8)-(11) are new, definitions (12) and (13) are revised versions of current R315-1-1(h)(4) and (5), definitions (14), (15) and (16) are new.

Kennecott understands definition (17) is a slightly revised version of current R315-1-1(h)(7), definition (18) and (19) are the same as current R315-1-1(h)(8) and (9).

Kennecott suggests the following change to the proposed definition (20), understood to be a version of current R315-1-1(h)(6) revised as follows:

(620) "Risk-based Clean Closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the Responsible Party nor any notice of hazardous waste management on the deed to the property.

Kennecott understands definitions (21), (22), and (24) are new.

Kennecott understands definition (23) is the same as current R315-1-1(h)(10).

**R315-260-19. Variances Authorized.**

Kennecott understands Proposed R315-260-19 is a slightly revised version of current R315-2-13. A substantive change is that the first reference in the second sentence of (f) currently refers to R315-9-2, which has to do with variances from manifest and recordkeeping requirements in the event of an emergency spill clean-up, while the proposal just refers to the general variance language. To our way of thinking, this change alters the meaning; the original language implying that in a specific case the Director may require only some of the referenced information for a variance application, and the new language seeming to say the Director can require only some of the information for any variance application, contradicting (d). Please clarify the intent of this change

Kennecott understands proposed R315-260-20 is the same as current R315-2-17.

Kennecott understands proposed R315-21 is essentially the same as 40 CFR 260-21, except that in (c) “he” should read “it” or “the Board”.

Kennecott understands proposed R315-260-22, 23, 30, 31, 32, 33, 34, 40, and 41 are essentially the same as 40 CFR 260-22, 23, 30, 31, 32, 33, 34, 40, and 41, respectively.

Kennecott understands proposed R315-260-42. Notification Requirement for Hazardous Secondary Materials is essentially the same as 40 CFR 260.42. The last sentence contains an erroneous reference; it should refer to R315-260-42, not R315-260-40.

Kennecott understands proposed R315-260-43. Legitimate Recycling of Hazardous Secondary Materials is essentially the same as 40 CFR 260-43.

In Proposed R315-260-43(a)(4)(i)(A) a dash was left out of the reference “R315-261\_20 through 24”.

**Proposed R315-261 contains many minor errors**

Kennecott understands R315-261-1 is the same as 40 CFR 261.1.

R315-261-2 Utah not adopting military munitions language

R315-261-2(d)(3) erroneously refers to “the list found in Table 1 of Section

R315-261-2”, where the federal rule refers to “that list”. In context, it seems clear to Kennecott “that list” means (d)(1) and (2), the list of “inherently waste-like materials”. 262-3(a)(2)(iv)(A), (B), (F) and (G) read “, at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, ” where the federal language is “(at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions)”. Not sure whether Utah needs to refer to the NSPS and NESHAP specifically.

R315-261-3(c)(2)(i) “Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated” omits (h) as in the federal version “Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h)”, which would negate an exemption for certain radioactive mixed wastes. (h) itself is copied correctly.

R315-261-4(a)(23)(i)(C) contains a typo – “R315-261-4(a)(i)(C)” should read “R315-261-4(a)(23)(i)(C)”. The federal version says “this paragraph”.

R315-261-4(a)(24)(iii) contains a typo – “R315-261-4(23)(a)” should read “R315-261-4(23)(a)”.

R315-261-4(a)(27)(vi)(A) Omits the word “Notify” before “the Director”.

R315-261-4(b)(17) – is reserved. 40 CFR 261.4(b)(17) pertains to a facility in Pennsylvania, so Utah need not adopt it.

Otherwise, R315-261.4 reflects 40 CFR 261.4.

R315-261-5 – 261-8 are essentially the same as 40 CFR 261.5 – 8.

R315-261-9 adds antifreeze and aerosol cans to the federal list of universal wastes.

R315-261-10 – 261-11 essentially the same as 40 CFR 261.10 – 11.

R315-261-20(b), 2<sup>nd</sup> sentence contains a typo. “368” should be “268”.

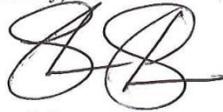
R315-261-21 – 261-24 essentially the same as 40 CFR 261.21 – 24.

R315-261-30(b) Should read “The Board shall indicate ~~his~~ its . . .”

R315-261-31(a) “, ethyl ether, methyl isobutyl ketone, n-butyl” was left out of the definition of F003 and should be inserted after “ethyl benzene”. In the definition of F019, “(b)(4)” should be inserted as shown “ R315-261-31(b)(4)(ii) describes the recordkeeping requirements for motor vehicle manufacturing facilities”.

Please feel free to contact me or Glenn Eurick (801.541.3577; [Glenn.Eurick@riotinto.com](mailto:Glenn.Eurick@riotinto.com)) with any questions.

Sincerely,



Steve Schnoor  
Manager - Environment, Land and Water

Bcc:

Eurick, Glenn  
Ford, M. L (PBL)  
Salmon, L (Consultant)  
Evans, R.  
Clayton, B.  
Roberts, L.

## **Division of Waste Management and Radiation Control**

### **Response to Comments on Proposed Rules R315-260 and R315-261**

The comments made by Rio Tinto Kennecott are repeated followed by the response from the Director.

#### Comment

*A general comment is that a greater degree of clarity and justification be provided for those new and changed definitions not required by changes to corresponding Federal rule.*

#### Response

The definitions in proposed R315-260-10 are from federal rule or from current Utah rules. The definitions in R315-260-12 are new definitions and were expected to correspond with anticipated changes to R315-101. Changes in R315-101 have not yet been proposed. R315-260-12 will be removed and replaced with the definitions currently found in R315-1-1(h).

#### Comment

*Given the number of errors and other substantive issues, Kennecott is requesting the Division re-propose the entire rule for an additional 30-day comment period.*

#### Response

The Director acknowledges that changing the numbering system for all hazardous waste rules is a complicated project. In response to this comment, the Director conducted a second review of the newly proposed rules to correct both substantive and non-substantive errors. In addition to this second review, these rules, when adopted, will be sent to EPA for review as part of an authorization request. EPA will conduct a word for word comparison of the Utah rules and the federal rules. Any errors that are found in EPA's review will be reported to the Director and corrections will be made through the normal rule modification process. For these reasons, the Director does not believe it is necessary to re-propose these rules as requested by the commenter.

#### Comment

Kennecott is confused about DWMRC website language, and thus requests the Division confirm no additional R315 rules have been finalized recently without proper notice and comment.

#### Response

The comment is not detailed enough for the Director to determine which language the commenter considers confusing. Therefore, no response can be given. The commenter appears to be confused about the proper method of public notice used in the rulemaking process. The official notification, including all supporting information, for any proposed new rule or substantive modification of a rule is published in the Utah Bulletin. The Division web site is provided as a service to the public, but is not the official notification to the public of proposed rule changes. All proposed changes to R315 rules have been filed with the Division of Administrative Rules and properly noticed in the Utah Bulletin. Additionally, all other rule-making procedures have been followed.

Comment

R315-260-10(c)(25)(i)(B) has a typo - "40 CFR 27" should read "40 CFR 271."

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-260-10(c)(39) should refer to "Sections R315-260-20 and 21", not Sections R315-260-21 and 22."

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-260-10(c)(43)(ii) "Utah reference" needs to be supplied.

Response

The commenter is correct. The rule will be changed by adding references to R315-263-31 and R315-101.

Comment

R315-260-10(c)(54) contains an apparently erroneous reference -- "R315-260-10(c)(59)" should be "R315-260-10(c)(54)", as the federal definition says "this paragraph," meaning the definition itself.

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-260-10(c)(101) contains an apparently erroneous reference -- "R315-260-10(c)(107)(i) or (ii)" should be "R315-260-10(c)(101)(i) or (ii)", as the federal definition says "this definition".

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

The terms "Director", "Disposal", "Hazardous Waste", "Solid waste" are not defined in the rule, but are understood to be defined in the Statute, 19-6-102.

Response

The commenter is correct. The Division of Administrative Rules guidelines for rulemaking state that definitions that occur in statute should not be repeated in rules, but should be referenced as is done in Subsections R315-260-10(a) and (b). No change needed.

Comment

Clarification is requested as to the missing definitions of "Military munitions" and "Performance Track member facility" which are defined in the federal rule, but not in the State rule.

Response

The term "military munitions" is not defined because Utah is not adopting the federal Military Munitions Rule. "Performance Track" is not defined because the Performance Track program has expired.

Comment

Kennecott acknowledges the addition of the definition of "Solid Waste Management Unit" at (R315-260-10(c)(121). Kennecott acknowledges the addition of the definition of "spent material" at R315-260-10(c)(125) same as in 40 CFR 261. Kennecott acknowledges the addition of the R315-260-10(c)(149) that adds lamps, antifreeze and aerosol cans to the federal definition of Universal waste.

Response

No response needed.

Comment

The commenter had several comments on the definitions in R315-260-12. The comments will not be summarized.

Response

The definitions found in proposed R315-260-12 will be removed and the definitions found in current R315-1-1(h)(1) through (10) will be added. The Director expects to propose revisions to R315-101 in the near future. Until changes to R315-101 are proposed and accepted by the Board, the definitions for the current R315-101 must be retained. The proposed rule (R315-260-12) will be modified and a “Change in Proposed Rule” presented to the Board.

Comment

Kennecott understands Proposed R315-260-19 is a slightly revised version of current R315-2-13. A substantive change is that the first reference in the second sentence of (f) currently refers to R315-9-2, which has to do with variances from manifest and recordkeeping requirements in the event of an emergency spill clean-up, while the proposal just refers to the general variance language. To our way of thinking, this change alters the meaning; the original language implying that in a specific case the Director may require only some of the referenced information for a variance application, and the new language seeming to say the Director can require only some of the information for any variance application, contradicting (d). Please clarify the intent of this change.

Response

The reference in R315-260-19(f) referring to R315-260-19 is incorrect and will be changed to refer to R315-263-32, which addresses emergency control variances regarding manifest and recordkeeping requirements.

Comment

Kennecott understands proposed R315-260-20 is the same as current R315-2-17.

Response

The commenter is correct.

Comment

Kennecott understands proposed R315-21 is essentially the same as 40 CFR 260-21, except that in (c) "he" should read "it" or "the Board".

Response

The term "he" will be changed to "the Board."

Comment

Kennecott understands proposed R315-260-22, 23, 30, 31, 32, 33, 34, 40, and 41 are essentially the same as 40 CFR 260-22, 23, 30, 31, 32, 33, 34, 40, and 41, respectively.

Response

The commenter is correct.

Comment

Kennecott understands proposed R315-260-42. Notification Requirement for Hazardous Secondary Materials is essentially the same as 40 CFR 260-42. The last sentence contains an erroneous reference; it should refer to R315-260-42, not R315-260-40.

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

Kennecott understands proposed R315-260-43. Legitimate Recycling of Hazardous Secondary Materials is essentially the same as 40 CFR 260.43.

In Proposed R315-260-43(a)(4)(i)(A) a dash was left out of the reference "R315-26120 through 24".

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

Kennecott understands R315-261-1 is the same as 40 CFR 261.1.

R315-261-2 Utah not adopting military munitions language

Response

The commenter is correct.

#### Comment

R315-261-2(d)(3) erroneously refers to "the list found in Table 1 of Section R315-261-2", where the federal rule refers to "that list". In context, it seems clear to Kennecott "that list" means (d)(1) and (2), the list of "inherently waste-like materials". 262-3(a)(2)(iv)(A), (B), (F) and (G) read ", at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, " where the federal language is "(at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions)". Not sure whether Utah needs to refer to the NSPS and NESHAP specifically.

#### Response

R315-261-2(d)(3) will be changed to read as follows:

“The Board will use the following criteria to add wastes to ~~[the list found in Table 1 of Section R315-261-2]~~Subsections R315-261-2(d)(1) or (2).”

The Director has determined that the reference to the Utah Air Conservation Act covers the facilities in Utah that are covered in the reference in federal rule to the Clean Air Act.

#### Comment

R315-261-3(c)(2)(i) "Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated" omits (h) as in the federal version "Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h)", which would negate an exemption for certain radioactive mixed wastes. (h) itself is copied correctly.

#### Response

R315-261-3(c)(2)(i) is correct as proposed; a reference to (h) was intentionally omitted. R315-261-3(h) will be removed. Utah does not intend to adopt the Mixed Waste Rule.

#### Comment

R315-261-4(a)(23)(i)(C) contains a typo - "R315-261-4(a)(i)(C)" should read "R315-261-4(a)(23)(i)(C)". The federal version says "this paragraph".

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-261-4(a)(24)(iii) contains a typo - "R315-261-4(23)(a)" should read "R315-261-4(23)(a)".

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-261-4(a)(27)(vi)(A) Omits the word "Notify" before "the Director".

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-261-4(b)(17) - is reserved. 40 CFR 261.4(b)(17) pertains to a facility in Pennsylvania, so Utah need not adopt it.

Otherwise, R315-261.4 reflects 40 CFR 261.4.

R315-261-5 - 261-8 are essentially the same as 40 CFR 261.5 - 8.

R315-261-9 adds antifreeze and aerosol cans to the federal list of universal wastes.

R315-261-10 - 261-11 essentially the same as 40 CFR 261.10 - 11 .

Response

The commenter's observations are correct.

Comment

R315-261-20(b), 2nd sentence contains a typo. "368" should be "268".

Response

The commenter is correct. The rule will be changed as indicated in the comment.

Comment

R315-261-21 - 261-24 essentially the same as 40 CFR 261.21 - 24.

Response

The commenter's observations are correct.

Comment

R315-261-30(b) Should read "The Board shall indicate ~~his~~ its . . . "

Response

The commenter is correct. The rule will be changed substituting "the" for "his."

Comment

R315-261-31(a) ",ethyl ether, methyl isobutyl ketone, n-butyl" was left out of the definition of F003 and should be inserted after "ethyl benzene". In the definition of F019, "(b)(4)" should be inserted as shown" R315-261-31(b)(4)(ii) describes the recordkeeping requirements for motor vehicle manufacturing facilities".

Response

The commenter is correct. The rule will be changed as indicated in the comment.