



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Scott T. Anderson
Director

A regular meeting of the Waste Management and Radiation Control Board has been scheduled for April 14, 2016 at 1:30 p.m., at the Utah Department of Environmental Quality, Multi-Agency State Office Building, Conference Room #1015, 195 North 1950 West, SLC.

(One or more Board members may participate telephonically.)

AGENDA

- I. Call to Order.
- II. **Approval of the Meeting Minutes for the March 10, 2016 Board Meeting (Board Action Item)** Tab 1
- III. **Underground Storage Tanks Update**..... Tab 2
- IV. Administrative Rules Tab 3
 - A. **Final adoption of proposed changes to Hazardous Waste 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 setting of an effective date (Board Action Item).**
 - B. **Final adoption of the repeal of 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 setting of an effective date (Board Action Item).**
 - C. **Approval to proceed with formal rulemaking and a 30-day public comment period for amendments to the Hazardous Waste Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273 (Board Action Item).**
 - D. **Approval to proceed with formal rulemaking and a 30-day public comment period for proposed changes to Radiation Control Rules R313-19 and R313-22 to incorporate changes requested by the Nuclear Regulatory Commission (NRC) (Board Action Item).**
- V. Low Level Radioactive Waste Section Tab 4
 - A. **EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions, LLC seeks authorization to dispose of one, 5-gallon bucket of spent Lithium-thionyl chloride batteries following macroencapsulation (Board Action Item).**

(Over)

- B. EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions, LLC seeks authorization to dispose of High Concentration Arsenic Waste following macroencapsulation **(Board Action Item)**.

VI. Director's Report.

VII. Other Business.

- A. Misc. Information Items.

- B. Scheduling of next Board Meeting.

VIII. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Dana Powers, Office of Human Resources at (801) 499-2117 TDD (801) 903-3978 or by email at dpowers@utah.gov.

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
March 10, 2016
1:30 p.m.

Board Members Present: Richard Codell, Danielle Endres, Marc Franc, Alan Matheson, Steve McIff, Shawn Milne, Brett Mickelson, Dennis Riding (Vice Chair), Vern Rogers, Shane Whitney and Dwayne Woolley (Chair)

Board Members Absent: Jeremy Hawk

Staff Members Present: Scott Anderson, Brent Everett, Sandra Allen, Therron Blatter, Ralph Bohn, Ryan Johnson, Arlene Lovato, Rusty Lundberg, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Matt Sullivan, Doug Taylor, and Otis Willoughby

Others Present: Tim Orton, Donna Sackett, Brent Stephens

I. Call to Order.

Dwayne Woolley (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m.

II. Approval of the meeting minutes for the January 14, 2016 Board meeting.

It was moved by Shawn Milne and seconded by Dennis Riding and UNANIMOUSLY CARRIED to approve the January 14, 2016 Board Meeting minutes.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of January 2016 was \$16,142,833.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of February 2016 is \$16,667,613.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. The balance fluctuates based on the number of claims received and the cost of claims paid. There were no questions or comments on the PST Trust Fund balance.

Mr. Everett reported on House Bill (HB) 385. This legislation pertains to air quality. However, because it impacts facilities that are regulated by the Underground Storage Tank Program, Mr. Everett wanted to bring it to the Board's attention. HB 385, sponsored by Representative Eliason, requires a deliverer of fuel to use secondary vapor containment during a fuel drop. If the secondary containment is not used, a fine could be imposed. HB 385 also provides that if a facility does not have the proper equipment to hook up to a secondary containment system, there would be no fine. Air quality rules are already in place regarding vapor recovery. This bill adds the authority for fining those who are not using the secondary containment system.

Dennis Riding asked if the bill had an enforcement mechanism. Mr. Everett explained that the legislation does not address enforcement.

IV. Administrative Rules.

A. Approval for filing a five-year review of Radiation Control Rule R313-26 (Board Action Item).

Rusty Lundberg, Deputy Director, Division of Waste Management and Radiation Control reviewed the filing of a five-year review for Rule R313-26, Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities. Mr. Lundberg informed the Board that for the rule to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review.

The Utah Administrative Rulemaking Act (Utah Code Annotated §63G-3-305) requires state agencies to review each of their administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to provide agencies with an opportunity to evaluate the rules to assess if the rules should be continued. In performing a five-year review, an agency may consider the need to amend or repeal rules that are archaic in form, are no longer used, are not based on existing statutory authority or are otherwise unnecessary.

R313-26 applies to facilities that use the disposal services of EnergySolutions through a permit that is issued by the Director. This rule identifies the requirements to obtain a permit.

Mr. Lundberg reiterated that a five-year review does not include any rule changes. A five-year review is only a mechanism for agencies to evaluate whether the rule is meeting its objective and should be continued. If a five-year review is not filed in the timeframe outlined, the rule could be automatically repealed (sunset of the rule).

It was moved by Steve McIff and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve filing a five-year review for Radiation Control Rule R313-26.

B. Approval for filing a five-year review for Hazardous Waste Rules R315-15, R315-17, R315-101, R315-102 (Board Action Item).

Ralph Bohn, Planning and Technical Support Manager, Division of Waste Management and Radiation Control informed the Board that Rules R315-101 (Cleanup Action and Risk-Based Closure Standards) is up for a five-year review. As previously explained, if this rule is to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review.

Mr. Bohn further explained that because a five-year review of current rules can be filed at any time, the Director is proposing that Notices of Continuation (Five-Year Review) also be filed for Rules R315-15 (Standards for the Management of Used Oil), R315-17 (End of Life Automotive Mercury Switch Removal Standards) and R315-102 (Penalty Policy). By filing Notices of Continuation for all of these rules at this time, all of the hazardous waste rules will be on the same five-year review schedule. This will make administration of the five-year review process much easier and will ensure that reviews are not missed.

Mr. Bohn emphasized that a five-year review does not include any rule changes. It is only used as a mechanism for agencies to evaluate whether their rules are meeting their objective and should be

continued. If a rule requires any changes, it must go through the formal rulemaking process. Any changes to a rule, does not re-start the five year review period.

It was moved by Vern Rogers and seconded by Shawn Milne and UNANIMOUSLY CARRIED to approve filing five-year reviews for Hazardous Waste Rules R315-15, R315-17, R315-101 and R315-102.

C. Final adoption of R313-15, R313-19, and R313-24 to incorporate changes to the federal decommissioning planning regulations promulgated by the Nuclear Regulatory Commission on June 17, 2011 (76 FR 35512) (Board Action Item).

Rusty Lundberg reviewed the Director's request for final adoption of proposed changes to R313-15, Standards for Protection of Radiation, R313-19, Requirements of General Applicability to Licensing of Radioactive Material and R313-24, Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.

In the December 10, 2015 Board meeting, the Board approved filing with the Division of Administrative Rules for publication in the Utah State Bulletin, the proposed changes to R313-15, R313-19 and R313-24. The rule changes incorporate the federal decommissioning planning regulations promulgated by the U.S. Nuclear Regulatory Commission (NRC) on June 17, 2011. The NRC issued the regulations to improve decommissioning planning in order to reduce the likelihood that any current operating facility will become a legacy site. The amended regulations require licensees to conduct their operations to minimize the introduction of residual radioactivity into the site, which includes the site's subsurface soil and groundwater.

Licensees also may be required to perform site surveys to determine whether residual radioactivity is present in subsurface areas and to keep records of these surveys with records important for decommissioning. The amended regulations require licensees to report additional details in their decommissioning cost estimate, eliminate the escrow account and line of credit as approved financial assurance mechanisms and modify other financial assurance requirements. Changes to Utah rules are required in order to maintain compatibility with NRC regulations as an Agreement State with the NRC. Under NRC's requirements, an Agreement State has three years from the effective date of a federal regulation to adopt a corresponding rule.

The proposed rule changes were published in the January 1, 2016 edition of the Utah State Bulletin initiating the public comment period which ended February 1, 2016. No comments were received.

It was moved by Dennis Riding and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to R313-15, R313-19, and R313-24 to incorporate changes to the federal decommissioning planning regulations promulgated by the Nuclear Regulatory Commission on June 17, 2011, as published in the January 1, 2016 Bulletin with an effective date of March 15, 2016.

D. Approval of a change in a proposed rule to R313-22-35 to incorporate comments made by the Nuclear Regulatory Commission (Board Action Item).

Rusty Lundberg reviewed an additional change made to R313-22-35, Financial Assurance and Recordkeeping for Decommissioning, based on a comment received in a letter from the U.S. Nuclear Regulatory Commission (NRC). (A copy of the NRC letter was provided in the March 2016 Board packet.)

In the December 10, 2015 Board meeting, the Board approved filing with the Division of Administrative Rules and publication in the Utah State Bulletin, proposed changes to R313-22, Specific Licenses, together with other proposed changes to R313-15, R313-19 and R313-24. Changes to these rules were required in order to maintain regulatory compatibility with the NRC by incorporating federal decommissioning planning regulations promulgated by the U.S. Nuclear Regulatory Commission (NRC) on June 17, 2011. The comment from the NRC only affects a paragraph in R313-22-35.

NRC requested the following change to paragraph R313-22-35(5)(a)(C):

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination;

The Board is being asked to approve the filing of a Change in Proposed Rule (R313-22) with the Division of Administrative Rules with an effective date of May 9, 2016. The change in the proposed rule addresses NRC's requested change and maintains compatibility with the corresponding federal radioactive materials regulations.

Dennis Riding asked if the Change in Proposed Rule will go back out for a 30-day public comment period. Mr. Lundberg explained that these changes do not go through another 30-day formal public comment period, as DAR only requires a 30-day notice period prior to the rule becoming effective.

It was moved by Shane Whitney and seconded by Shane Milne and UNANIMOUSLY CARRIED to approve the filing of a change to proposed Rule to R313-22-35 to incorporate comments made by the Nuclear Regulatory Commission with an effective date of May 9, 2016.

E. Approval to proceed with formal rulemaking and 30-day public comment period for proposed changes to Solid Waste Rule R315-310 and to adopt Solid Waste Rule R315-319 (Board Action Item).

Matt Sullivan, Environmental Scientist, Solid Waste Section, Division of Waste Management and Radiation Control, reviewed the proposed changes to R315-310, Permit Requirements for Solid Waste Facilities and adoption of R315-319, Coal Combustion Residuals Requirements. Mr. Sullivan provided a power-point presentation (a copy of the presentation is available with the meeting minutes.)

Mr. Sullivan gave a brief history regarding the proposed coal ash rule. In December 2008, a surface impoundment owned by the Tennessee Valley Authority had a serious breach at one of its coal ash storage impoundments and released 1.1 billion gallons of coal ash into the Clinch River. In response, EPA promulgated new rules to address the management of coal combustion residuals in landfills and surface impoundments. The federal rule was published in April of 2015 and became effective in October of 2015.

R315-319 is patterned after the new federal rules and specifies the minimum criteria for management of these wastes in landfills and surface impoundments, including the requirement to obtain a permit. The rule also adds language allowing continued operation of landfills that are in operation at the time the requirement for a permit becomes effective, provided an application is submitted within six months of the effective date of the rule.

Richard Codell asked if the State or EPA is going to require plants that have impoundments for coal ash be closed by a certain date. Ralph Bohn explained that plants do not need to close, but the federal rule requires that the impoundments be upgraded to a fairly high standard, which may force a number of plants to close. Many plants are moving to non-liquid disposal for their ash.

Mr. Codell asked if any of the plants are making dry wall board from scrubber residue. Mr. Bohn stated that some of it is used in this manner but in the west it's cheaper to use gypsum for wall board than scrubber residue so it's a question of economics. Mr. Codell asked about other uses of scrubber residue. Mr. Bohn explained it can be used in soil treatment to break up clay.

Dennis Riding asked about the environmental effects from these types of residues. Ralph Bohn stated that the main problem is groundwater contamination from nitrates and heavy metals. The EPA does have evidence of environmental damage from coal ash. The coal combustion residuals can also be a wind-blown problem.

Dwayne Woolley requested clarification on lined landfills, Class I/Class II landfills. Ralph Bohn explained that the rule requires liners, so Class I and Class II landfills will require liners if they want accept this type of waste. The plants that produce this waste will more than likely operate their own landfills as it is not economic for them to ship off-site.

Dennis Riding asked if impacted stakeholders were contacted for input regarding this rule. Ralph Bohn explained that the affected facilities were engaged in the rule development and have seen it twice already. Stakeholders may also provide additional comments during the 30-day public comment period.

Marc Franc asked that if the rule affects permitted solid waste facilities that may already accept this type of waste. Ralph Bohn stated that Class I, Class II, and Class V landfill facilities will be allowed to continue to accept this material under their current permit even if the cells are not lined. However, Class II landfills will likely not accept this waste because the volume will be overwhelming and would affect their status. The rule allows existing cells to continue operation unlined; any new cell would need to be lined.

It was moved by Marc Franc and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to proceed with formal rulemaking and 30-day public comment period for proposed changes to Solid Waste Rule R315-310 and to adopt Solid Waste Rule R315-319.

V. Low Level Radioactive Waste Section.

A. EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of one, 5-gallon bucket of spent Lithium-thionyl chloride batteries following macroencapsulation (Information Item Only).

Otis Willoughby, Environmental Scientist, Low Level Radioactive Waste Section, Division of Waste Management and Radiation Control, and Tim Orton, Representative for EnergySolutions, provided information on EnergySolutions' request for a variance from the Utah Hazardous Waste Management Rules. On January 22, 2016, EnergySolutions, LLC submitted a request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to dispose of High Concentration Arsenic Waste following macroencapsulation.

Tim Orton informed the Board that this type of variance request dealing with battery disposal was presented to the Board last year and since variances are only valid for one year, EnergySolutions is coming before the Board again to request a new variance to treat one 5-gallon bucket of spent lithium-thionyl chloride batteries at the Mixed Waste Facility.

The land disposal regulations require that batteries containing lithium be deactivated prior to land disposal. Macroencapsulation technology requires the waste to be classified as debris (which is a material exceeding 60 mm) before that technology can be used. EnergySolutions proposes to treat this 5-gallon bucket of batteries by macroencapsulation (even though the batteries are smaller than 60 mm) in the Mixed Waste Landfill Cell. This method will isolate the waste from precipitation and potential leaching. This request is based on the fact that, in order to deactivate the batteries, they would first need to be shredded. This method of treatment creates additional hazards to the employees without the assurance that the batteries, based on their size and shape, would be shredded. Final disposal of the waste will occur in the Mixed Waste Landfill Cell at the Mixed Waste Facility.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on March 1, 2016. The comment period began March 1, 2016 and will end March 30, 2016. (If requested, a public meeting would be held but could potentially extend the public comment period). This is an informational item and will be brought before the Board for final adoption at the next Board meeting.

Dennis Riding asked if the facility anticipates receiving more of this waste stream. Mr. Orton did not anticipate the second shipment of this waste stream, but said the generator called and informed him that he had one more bucket of batteries, so he is unsure at this time.

Richard Codell asked if there is any radiation associated with these batteries. Mr. Orton explained that it is not likely but since the batteries came from a radiation area, they have to be handled accordingly. Mr. Codell stated he is familiar with the batteries in electronics and asked about the disposal of batteries not associated with radioactive equipment. Mr. Orton stated that if the batteries are from household use, they can be disposed in a municipal landfill. The only reason EnergySolutions is dealing with this waste stream is because the batteries might be radioactive as they are coming from a radioactive facility.

Vern Rogers asked if EnergySolutions noticed any impact to the macroencapsulation process from last year's treatment, due to the size, etc. Mr. Orton stated no, it does not change anything. These are such a minor portion of the macroencapsulation size (approximately one cubic foot).

B. EnergySolutions, LLC request for a site-specific treatment variance from the Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of High Concentration Arsenic Waste following macroencapsulation (Information Item Only).

Otis Willoughby and Tim Orton provided information on the variance request, dated January 18, 2016, from EnergySolutions LLC for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to dispose of High Concentration Arsenic Waste following macroencapsulation.

Mr. Orton informed the Board that the Mixed Waste Facility has received approximately 105 cubic feet of Natural Gas Sweetener Filter Media. This material, made of clay pellets, retains hazardous waste codes for arsenic, cadmium and benzene. EnergySolutions proposes to treat this waste by macroencapsulation in the Mixed Waste Landfill Cell following chemical stabilization of the other contaminants. This request is based on the fact that the facility has attempted a variety of treatment formulas and has been unsuccessful in attaining treatment levels for the arsenic. The other contaminants have been treated below Land Disposal Restriction levels. The facility proposes to treat the final waste form with its in-cell macroencapsulation process. This method will isolate the waste from precipitation and potential leaching.

Mr. Orton stated that this type of waste would normally be treated at a hazardous waste landfill, but because of the radioactivity, it has to be treated otherwise. EnergySolutions proposes to treat the waste

to the standard of 5.0 mg/L for arsenic. Over the past six months, EnergySolutions has performed eight or nine treatability studies with various reagents and has been able to treat the waste to 129 mg/L for arsenic, where it has plateaued. Mr. Orton stated the Board is allowed to grant a variance if it is not physically possible to treat the waste to the level specified in the treatment standard. Therefore, the macroencapsulation process will be utilized and will isolate the waste from the environment so it will not leach out.

Shane Whitney asked about the volume of the waste stream. Mr. Orton stated that the facility has received approximately 105 cubic feet and does not expect to see any more of this type of waste. Mr. Orton also explained that this waste is well below the limits for radioactive disposal at the site.

Dennis Riding asked if the arsenic had become higher or started out at a high level. Mr. Orton clarified that the arsenic level started out high from the generator.

A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on March 1, 2016. The comment period began March 1, 2016 and will end March 30, 2016. This is an informational item and will be brought before the Board for final adoption at the next Board meeting.

VI. Legislative Update.

Scott Anderson provided an update on bills that impact the Division of Waste Management and Radiation Control.

House Joint Resolution 13, sponsored by Representative McKell, directs the Division to study solid waste disposal fees and propose a “fair and equitable” solid waste fee structure. This bill has been sent to the House Rules Committee. It will likely be placed on an interim study list for further study.

House Joint Resolution 20, sponsored by Representative Perry gives Legislative Approval for construction and operation of a Class V solid waste landfill. Approval to operate a Class V solid waste landfill, which is a commercial facility, requires legislative approval, local government approval, a permit from the Director and the Governor’s approval. This is the first step in the process to obtain the necessary approvals. The landfill is located in Box Elder County.

This Joint Resolution has passed both the Senate and the House. The owners already have a permit for Class I landfill at this location, which could be amended to a Class V permit. However, because of the extensive requirements to obtain a Class V permit, it is being treated as a new application rather than amendment. The facility will also have to meet location standards, etc. Currently, the facility has not done any construction at the location.

House Bill 20, sponsored by Representative Perry, extends the sunset date for the Lead Acid Battery Disposal Act from 2016 to 2026. This bill has passed both the Senate and the House and has been sent on for enrollment/Governor’s signature.

House Bill 138, sponsored by Representative Perry, eliminates the requirement for the Division to report on electronic waste recycling to the House Natural Resources, Agriculture and Environment and Public Utilities Interim Committees. This bill has passed both the Senate and the House and has been sent on for enrollment/Governor’s signature.

House Bill 258, sponsored by Representative Oda, creates some exemptions from the definition of “solid waste” and “solid waste management facilities” for metal and metal recycling facilities and creates

standards for recyclers under certain conditions. This bill has passed both the Senate and the House and has been sent on for enrollment/Governor's signature. However, because these exemptions do not exist in Federal law, the Environmental Protection Agency has reviewed these exemptions and has made the determination that they conflict with Federal law. The EPA has determined that these exemptions make the State of Utah hazardous waste program less stringent than the federal government and raise state authorization (primacy) issues.

House Bill 347, sponsored by Representative Handy, creates authority for special service districts to acquire, construct and operate a resource recovery project. This bill is similar to Senate Bill 142, sponsored by Senator Weiler. During a committee meeting it was decided to move the relevant language in SB 142 to HB 347, because HB 347 opened the same part of the Code and was ahead of SB142. However, both bills have passed and have been sent for enrollment.

House Bill 476, sponsored by Representative Ipson, creates a waste paint management program. This bill provides for fees on the sale of paint at the distributor and retail level. The money collected would be utilized to fund a program for recycling and re-use of waste paint rather than disposal in a landfill. This bill has been sent back to the House Rules Committee and is not anticipated to pass.

Senate Bill 196, sponsored by Senator Iwamoto, creates incentives for recycling plastic bags, and imposes a 10 cent fee on certain plastic bags at point of sale. This bill is currently at the Senate Rules Committee and is not anticipated to pass.

Senate Bill 231, sponsored by Senator Adams. This bill is in response to legislation Senator Adams sponsored last year to address options for establishing financial assurance. The Nuclear Regulatory Commission (NRC) declared that legislation not compatible with the federal program, so this bill is designed to address those issues raised by the NRC. SB 231 provides approval authority for the Director regarding financial assurance from radioactive waste management facilities and authority to require financial assurance for "disturbed lands" at low level radioactive waste management facilities. The NRC still has some issues and this bill has been sent to the Senate Rules Committee and will require further modifications.

VII. Other Business.

- A. Misc. Information Items – None.
- B. Scheduling of next Board Meeting.

The next Board meeting is scheduled for 1:30 p.m. on April 14, 2016 at the Utah Department of Environmental Quality, 195 North 1950 West, SLC.

VIII. Adjourn.

The meeting adjourned at 2:24 p.m.

UST STATISTICAL SUMMARY													
March 1, 2015 -- February 29, 2016													
PROGRAM													
	March	April	May	June	July	August	September	October	November	December	January	February	(+/-) OR Total
Regulated Tanks	4,000	4,005	3,982	3,972	3,969	3,971	3,993	4,000	3,989	3,991	4,003	4,007	7
Tanks with Certificate of Compliance	3,904	3,914	3,906	3,893	3,893	3,889	3,885	3,889	3,887	3,887	3,916	3,919	15
Tanks without COC	96	91	76	79	76	82	108	111	102	104	87	88	(8)
Cumulative Facilities with Registered A Operators	1,340	1,341	1,336	1,331	1,330	1,330	1,333	1,334	1,333	1,332	1,333	1,333	97.73%
Cumulative Facilities with Registered B Operators	1,341	1,341	1,336	1,331	1,329	1,329	1,334	1,335	1,334	1,333	1,334	1,334	97.80%
New LUST Sites	4	4	7	6	8	14	7	5	4	6	3	4	72
Closed LUST Sites	10	10	2	12	13	10	6	9	7	10	9	3	101
Cumulative Closed LUST Sites	4794	4800	4805	4817	4824	4842	4848	4857	4859	4867	4878	4886	92
FINANCIAL													
	March	April	May	June	July	August	September	October	November	December	January	February	(+/-)
Tanks on PST Fund	2,891	2,891	2,884	2,870	2,867	2,860	2,846	2,844	2,840	2,840	2,763	2,766	(125)
PST Claims (Cumulative)	633	633	636	638	638	646	647	648	649	647	647	649	16
Equity Balance	-\$9,956,153	-\$9,282,773	-\$9,325,810	-\$9,241,227	-\$8,880,024	-\$9,079,617	-\$7,810,251	-\$7,663,788	-\$7,186,058	-\$7,441,692	-\$7,435,326	-\$7,180,546	\$2,775,607
Cash Balance	\$15,716,863	\$16,390,243	\$16,347,205	\$16,431,789	\$16,792,993	\$16,214,452	\$16,211,196	\$16,357,660	\$16,835,389	\$16,406,467	\$16,412,833	\$16,667,613	\$950,750
Loans	1	3	0	0	3	0	0	0	0	2	0	1	0
Cumulative Loans	99	102	102	102	105	105	105	105	105	107	107	108	9
Cumulative Amount	\$3,382,883	\$3,691,025	\$3,691,026	\$3,691,026	\$3,727,980	\$3,727,980	\$3,727,980	\$3,727,980	\$3,727,980	\$3,889,300	\$3,889,300	\$3,911,924	\$529,041
Defaults/Amount	0	0	0	0	0	0	0	0	0	0	0	0	0
	March	April	May	June	July	August	September	October	November	December	January	February	TOTAL
Speed Memos	34	36	28	51	34	34	45	52	38	20	18	10	400
Compliance Letters	8	7	3	4	6	5	3	14	3	6	13	1	73
Notice of Intent to Revoke	0	0	1	0	0	0	0	0	0	0	0	0	1
Orders	5	3	5	2	1	0	0	1	0	0	1	0	18

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

What is the issue before the Board?	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.
What is the historical background or context for this issue?	<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>
What is the governing statutory or regulatory citation?	19-6-104(3)(d) and 19-6-106 of the Utah Code Annotated provide rulemaking authority for the Board.
Is Board action required?	Yes. Board approval is required to adopt the rules and set an effective date.
What is the Division Director’s recommendation?	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.
Where can more information be obtained?	For more information, contact Ralph Bohn at (801) 536-0212 or by email at rbohn@utah.gov.



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Div of Waste Management
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MAR - 1 2016
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.¹ 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).

¹ 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

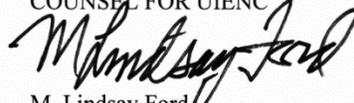
Rule R315-260-12 (Definitions for Rule 315-101) would add new definitions for Rule R315-101 (Cleanup Action and Risk-Based Closure Standards), but the current version of R315-101 does not use those definitions and the agency has not (yet) proposed changes to R315-101 that use those definitions. The proposed 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

4826-7398-7886.v1

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.

Rio Tinto Kennecott
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Steve Schnoor
Manager – Environment, Land and Water

Received by Waste Management and
Radiation Control
March 2, 2016

DSHW-2016-007163

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), 2nd sentence contains a typo. “368” should be “268”.

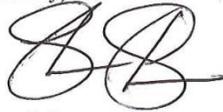
R315-261-21 – 261-24 essentially the same as 40 CFR 261.21 – 24.

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) 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.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Repeal of 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

April 14, 2016

What is the issue before the Board?	The Board is being asked to repeal 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.
What is the historical background or context for this issue?	In a separate action, the Board is being asked to adopt new hazardous waste rules. Accordingly, the current hazardous waste rules identified above must be repealed. The repeal of the current rules will not take place until the new rules are in affect.
What is the governing statutory or regulatory citation?	19-6-104(3)(d) and 19-6-106 of the Utah Code Annotated provide rulemaking authority for the Board.
Is Board action required?	Yes. Board action is needed to repeal the listed rules and set an effective date of the repeal.
What is the Division Director's recommendation?	The Director recommends that 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 be repealed and the effective date of the repeal be April 15, 2016.
Where can more information be obtained?	For more information, please call Ralph Bohn at (801) 536-0212. The proposed rule changes were provided to the Board in their January 14, 2016 Board packet.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Amendments to Rules R315-124, R315-260, R315-261,

R315-262, R315-264, R315-273

April 14, 2016

What is the issue before the Board?	The Board is being asked to approve amendments to Rules R315-124, R315-260, R315- 261, R315-262, R315-264, and R315-273 for publication in the Utah Bulletin and commencement of a 30-day public comment period.
What is the historical background or context for this issue?	In the January Board meeting, the Board approved 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 for publication in the Utah Bulletin and 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. Two commenters made comments on rules R315-124, R315-260 and R315-261. The comments and the response to the comments are included in the Board packet. In addition, the Division identified additional corrections to Rules R315-124, R315-262, R315-264 and R315-273 that need to be made. This Board Action is to publish modifications to Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315-273 to address the public comments and the sections needing corrections.
What is the governing statutory or regulatory citation?	19-6-104(3)(d) and 19-6-106 of the Utah Code Annotated provide rulemaking authority for the Board.
Is Board action required?	Yes. Board approval is needed to begin formal rulemaking.
What is the Division Director's recommendation?	The Director recommends that modifications to Rules R315-124, R315-260, R315-261, R315-262, R315-264 and R315- 273 be approved for publication in the Utah Bulletin to begin the public comment period.
Where can more information be obtained?	For more information, contact Ralph Bohn at (801) 536-0212. The rules can be viewed and downloaded at the following location: http://www.deq.utah.gov/boards/waste/rules.htm

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:		Date filed:		
State Admin Rule Filing Key:	157380			
Utah Admin. Code ref. (R no.):	R315-124-34			
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	
(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):	Public Participation			
Notice Type				
3. Type of notice:	Amendment			
Rule Purpose				
4. Purpose of the rule or reason for the change:	Add requirement for investigation of complaints.			
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes			
Rule Summary				
6. Summary of the rule or change:	The change adds a sentence to require investigation of complaints.			
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			
the rule change will have no effect as the current rule that is being replaced by R315-124 contains the same requirement.				
B) Local government:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			
No cost or savings as local governments are not affected.				
C) Small businesses:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			

<http://erules.rules.utah.gov/erules/secure/ruleFilingEdit.action?ruleId=157380>

4/7/2016

("small business" means a business employing fewer than 50 persons)
 No cost or savings as small businesses are not affected.
 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 as other persons are not affected.

Compliance Cost Information
 8. Compliance costs for affected persons:
 No compliance costs will result from this change.

Department Head Comments
 9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 No compliance costs will result to business from this change
 B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

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) :
 19-6-105, 19-6-106

Incorporated Materials
 11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 05/31/2016
 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): 06/07/2016
 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 Division 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")):
 hazardous waste

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule 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 title: Scott Anderson
Director Date (mm/dd/yyyy): 04/07/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

Rule R315-124. Procedures for Decisionmaking.

R315-124-34. Public Participation.

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 shall publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:	Date filed:			
State Admin Rule Filing Key: 157353				
Utah Admin. Code ref. (R no.): R315-260				
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	
(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):				
Hazardous Waste Management System				
Notice Type				
3. Type of notice: Amendment				
Rule Purpose				
4. Purpose of the rule or reason for the change:				
Responds to comments received during public comment period and correct errors in the rule.				
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.				
<input checked="" type="radio"/> No <input type="radio"/> Yes				
Rule Summary				
6. Summary of the rule or change:				
In R315-260-10 references are corrected and a reference that was omitted in the original filing is added. In R315-260-12 the definitions that are in the rule are removed and definitions from R315-1(h), which is being repealed, are added. In R315-260-21 "the Board" was omitted from the rule as filed and is inserted.				
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:				
Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes				
The rule changes will have no effect on the administration of the rule and will have no cost to the state.				
B) Local government:				
Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes				
There will be no cost or savings to local government as the rule does not affect local government.				
C) Small businesses:				

Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 There will be no cost of savings to small business as the administration of the rule will not change.
 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)
 There will be no cost of savings to persons other than small business as the administration of the rule will not change.

Compliance Cost Information
 8. Compliance costs for affected persons:
 The changes made do not affect the way the rule is administered and will not have any compliance cost increases.

Department Head Comments
 9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 The changes made do not affect the way the rule is administered and will not have any compliance cost increases.
 B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

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) :
 19-6-106, 19-6-105, 63G-4-503, 19-6-301
 63G-4-201 through 205

Incorporated Materials
 11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 05/31/2016
 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): 06/07/2016
 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 Division 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")):
hazardous waste

File Information
15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule 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 title: Scott Anderson Director Date (mm/dd/yyyy): 03/28/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-260. Hazardous Waste Management System.

R315-260-10. Definitions.

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(3) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(4) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(5) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(6) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(7) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

(8) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(9) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary

energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

(10) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(11) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(12) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

(13) "Certification" means a statement of professional opinion based upon knowledge and belief.

(14) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. See also "active portion" and "inactive portion".

(15) "Component" means either the tank or ancillary equipment of a tank system.

(16) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

(17) "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff,

releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

(18) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(19) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

(20) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(21) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(22) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

(23) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

(24) "CRT processing" means conducting all of the following activities:

(i) Receiving broken or intact CRTs; and

(ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(iii) Sorting or otherwise managing glass removed from CRT monitors.

(25) "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted and incorporated by reference.

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

(26) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(27) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(28) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(29) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(30) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(31) "Division" means the Division of Waste Management and Radiation Control.

(32) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(33) "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

(34) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

(35) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(36) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

(37) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

(38) "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

(39) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and 21~~[-and 22]~~.

(40) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii)(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations~~[-]~~ which cannot be cancelled or modified without substantial loss~~[-]~~ for physical construction of the facility to be completed within a reasonable time.

(41) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(42) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun;
or

(ii) the owner or operator has entered into contractual obligations[—], which cannot be canceled or modified without substantial loss[—], for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(43) "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under ~~[Utah reference]~~ Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-1-10(43)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

(44) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(45) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

(46) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

(47) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(48) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(49) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(50) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

(51) "Ground water" means water below the land surface in a zone of saturation.

(52) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

(53) "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

(54) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)(~~59~~54), "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(55) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

(56) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(57) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(58) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

(59) "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

(60) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(61) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(62) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;

(ii) Lime kilns;

(iii) Aggregate kilns;

(iv) Phosphate kilns;
(v) Coke ovens;
(vi) Blast furnaces;
(vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;
(viii) Titanium dioxide chloride process oxidation reactors;
(ix) Methane reforming furnaces;
(x) Pulping liquor recovery furnaces;
(xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:

(A) The design and use of the device primarily to accomplish recovery of material products;

(B) The use of the device to burn or reduce raw materials to make a material product;

(C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(E) The use of the device in common industrial practice to produce a material product; and

(F) Other factors, as appropriate.

(63) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(64) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(65) "Injection well" means a well into which fluids are injected. See also "underground injection".

(66) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(67) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(68) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

(69) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(70) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(71) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(72) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(73) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(74) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(75) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(76) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(77) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(78) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(79) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

(80) "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

(81) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

(82) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(83) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

(84) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(85) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(86) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

(87) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and 40 CFR 265.193(g)(2), which is adopted and incorporated by reference, a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265-193(g)(2), which is adopted and incorporated by reference, and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

(88) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

(89) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same

level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(90) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(91) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

(92) "Operator" means the person responsible for the overall operation of a facility.

(93) "Owner" means the person who owns a facility or part of a facility.

(94) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(95) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-5-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

(96) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

(97) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(98) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(99) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(100) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

(101) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (i) Is a new animal drug under FFDCA section 201(w), or
- (ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (iii) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by Subsection R315-260-10(~~107~~101)(i) or (ii).

(102) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(103) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(104) "POHC's" means principle organic hazardous constituents.

(105) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(106) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

(107) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(108) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

(109) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(110) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(111) "Remediation waste" means all solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

(112) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

(113)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

(114) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

(115) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(116) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(117) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(118) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(119) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(120) "Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

(121) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(122) "Solvent-contaminated wipe" means:

(i) A wipe that, after use or after cleaning up a spill, either:

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U- listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

(123) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(124) "Sorb" means to either adsorb or absorb, or both.

(125) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(126) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(127) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

(128) "State" means the state of Utah.

(129) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(130) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(131) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(132) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood, concrete, steel, plastic, which provide structural support.

(133) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(134) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(135) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or

biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

(136) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

(137) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(138) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

(139) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

(140) "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

(141) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(142)(i) "Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine:

- (A) Whether the waste is amenable to the treatment process,
- (B) what pretreatment, if any, is required,
- (C) the optimal process conditions needed to achieve the desired treatment,
- (D) the efficiency of a treatment process for a specific waste or wastes, or
- (E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(143) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(144) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(145) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

(146) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

(147) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(148) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(149) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

- (i) Batteries as described in Section R315-273-2;
- (ii) Pesticides as described in Section R315-273-3;
- (iii) Mercury-containing equipment as described in Section R315-273-4;
- (iv) Lamps as described in Section R315-273-5;
- (v) Antifreeze as described in Subsection R315-273-6(a); and
- (vi) Aerosol cans as described in Subsection R315-273-6(b).

(150) Universal Waste Handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(151) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(152) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(153) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(154) Used oil is defined in Subsection 19-6-703(19).

(155) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or 40 CFR 265.71(a)(2)(v) which is adopted and incorporated by reference. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(156) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(157) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(158) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

(159) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(160) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(161) "Well injection": See "underground injection"

(162) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(163) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

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

(a) For purposes of Rule R315-101 regarding cleanup action and Risk-Based Closure Standards, the following terms are defined:

~~[(1) "Acceptable Risk" means Cancer Risk greater than 1×10^{-6} but less than or equal 1×10^{-4} or a Hazard Index less than or equal to one with justifiable, reasonable and practicable measures in place to reduce and control risk within the range.~~

——— (2) "Appropriate Site Management Activities" means measures that are reasonable and practical that will be taken to control and reduce risks greater than 1×10^{-6} and less than 1×10^{-4} for carcinogen and Hazard Index equal to or less than one for non-carcinogens under both current and reasonably anticipated future land use conditions, e.g. institutional controls, engineering controls, groundwater monitoring, post-closure care, or corrective action and ensuring that all assumptions made in the estimation of Cancer Risk and non-cancer hazard in the risk assessment report are not violated.

——— (3) "Area of Contamination" means a Hazardous Waste Management Unit or a Solid Waste Management Unit or an area where a release has occurred.

——— (4) "The boundary" is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

——— (5) "Cleanup" Means the range of corrective action activities that occur in the context of addressing environmental contamination at RCRA sites to lower contaminant concentration or decrease chemical toxicity. Activities may include waste removal, contaminated media removal or source reduction (e.g. excavation, pumping), in-place treatment of waste or contaminated media (e.g. bioremediation), containment of waste or contaminated media, (e.g. barrier walls, low permeability covers, liners), or various combination of these approaches. Waste cover up or capping is not considered waste cleanup.

——— (6) "Concentration Term—95% Upper Confidence Limit" or "C" means the intake variable and it is an estimate of the arithmetic average concentration for a contaminant based on a set of site sampling results. Because of the uncertainty associated with estimating the true average concentration at a site, the 95% Upper Confidence Limit of the arithmetic mean is used to represent this variable and provides reasonable confidence that the true site average will not be underestimated.

——— (7) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in Rule R315-261, Appendix VIII.

——— (8) "Corrective Action" means the cleanup process or program under RCRA and all activities related to the investigation, characterization, and cleanup of release of hazardous waste or hazardous constituents from Solid Waste Management Units or Hazardous Waste Management Units at a permitted or interim status Treatment Storage Disposal Facilities or any environmental medium.

——— (9) "Corrective Action Complete With Controls" is a condition of a Solid Waste Management Unit, a Hazardous Waste Management Unit, an Area of Contamination or a contaminated site at closure meeting the requirements of R315-101-6(k)(4).

——— (10) "Corrective Action Complete Without Controls" is a condition of a Solid Waste Management Unit, a Hazardous Waste Management Unit, or a contaminated site at closure equivalent to a no further action meeting the requirements of R315-101-6(k)(5) or R315-101-6(f) or R315-101-6(j).

——— (11) Environment means the surroundings or conditions in which a person, animal, or plant lives or operates.

——— (12) "Hazard Index" means the sum of Hazard Quotients.

——— (13) "Hazard Quotient" means the ratio of exposed dose to some Reference Dose or Reference Concentration.

——— (14) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources.

——— (15) "No Further Action" means the state of a Solid Waste Management Unit, a Hazardous Waste Management Unit, or a contaminated site at closure meeting the requirements in R315-101-6(f) or R315-101-6(j) and it is equivalent to Corrective Action Complete Without Controls if the site was under corrective action activities. No further action is equivalent to unrestricted land use.

——— (16) "Potentially Complete Exposure Pathway" is a pathway which, due to current site conditions is incomplete, but could become complete at a future time because of changing site practices. An example would be the ingestion pathway of groundwater from a residential well in a high total dissolved solids aquifer. This pathway could be complete if treatment technologies like reverse osmosis become economically feasible and are observed to be employed successfully in that aquifer.

——— (17) "Reasonable Maximum Exposure" means the highest exposure that is reasonably expected to occur at a site. Reasonable Maximum Exposure combines upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

——— (18) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

——— (19) "Responsible Party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

——— (20) "Risk Based Clean Closure" means closure of a site where hazardous waste was managed or any medium that 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, in 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.

——— (21) "Risk Based Concentration" means the concentration of a contaminant the values of which are derived from equations combining toxicity factors with standard exposure scenarios to calculate chemical concentrations corresponding to some fixed levels of risks in any media (water, air, fish tissue, sediment, and soil).

——— (22) "Robust Statistic" means a statistic that is resistant to errors in the results, produced by deviations from assumptions, e.g., of normality. This means that the limits are not susceptible to outliers, or distributional assumptions. For example, if the limits are centered on the median, instead of on the mean, or on a modified, "robust mean", and constructed with suitable weighting, or influence, function, they could be considered "robust."

——— (23) "Site" means the Area of Contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the Responsible Party.

——— (24) "Target Risk" means any specified risk level.](1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, $C = \text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, $C = \exp(\text{Mean of$

lognormal-transformed data + 0.5 x Variance of lognormal-transformed data + Standard Deviation of lognormal-transformed data x H/(n - 1)^{1/2}, where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based 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 Rule R315-101, 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.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-260-21. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to Rules R315-261, R315-264, or R315-265 may petition for a regulatory amendment under Section R315-260-21 and Section R315-260-20. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in Rules R315-261, R315-264, or R315-265, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include, in addition to the information required by Section R315-260-20:

(1) A full description of the proposed method, including all procedural steps and equipment used in the method;

(2) A description of the types of wastes or waste matrices for which the proposed method may be used;

(3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Rules R315-261, R315-264, or R315-265;

(4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which ~~he~~the Board may reasonably require to evaluate the method.

(d) If the Board amends the rules to permit use of a new testing method, the method shall be incorporated by reference in Section R315-260-11.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the Director and the decision of EPA shall be binding upon the Board and the Director.

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:				Date filed:
State Admin Rule Filing Key:	157354			
Utah Admin. Code ref. (R no.):	R315-261			
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	
(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):	General Requirements - Identification and Listing of Hazardous Waste			
Notice Type				
3. Type of notice:	Amendment			
Rule Purpose				
4. Purpose of the rule or reason for the change:	The rule change is in response to public comments received on the rule.			
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes			
Rule Summary				
6. Summary of the rule or change:	In R315-261-2 "Table 1" is removed and the correct rule reference is inserted. In R315-261-31 the list of chemicals is corrected. In R315-261-39 references are corrected and language that was repeated is removed. In R315-261-141 references that were omitted are added.			
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			
The rule changes will have no effect on the administration of the rule and will have no cost to the state.				
B) Local government:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			
There will be not cost or savings to local government as the rule change will not change the administration of the rule.				
C) Small businesses:				

Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 The rule changes will not affect the administration of the rule and will not have any cost or savings to small business.
 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)
 The rule changes will not affect the administration of the rule and will not have any cost or savings to persons other than small business.

Compliance Cost Information
 8. Compliance costs for affected persons:
 The rule changes will not affect the administration of the rule and will not have any cost to affected persons.

Department Head Comments
 9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 The rule changes will not affect the administration of the rule and will not have any cost or savings to business.
 B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

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) :
 19-6-106, 19-6-105

Incorporated Materials
 11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 05/31/2016
 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): 06/07/2016
 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 Division 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")):

hazardous waste

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule 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 title: Scott Anderson
Director Date (mm/dd/yyyy): 03/28/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-261. General Requirements - Identification and Listing of Hazardous Waste.

R315-261-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by Subsection R315-261-4(a) or that is not excluded by variance granted under Sections R315-260-30 and R315-260-31 or that is not excluded by a non-waste determination under Sections R315-260-30 and R315-260-34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in Subsection R315-261-2(b); or

(B) Recycled, as explained in Subsection R315-261-2(c); or

(C) Considered inherently waste-like, as explained in Subsection R315-261-2(d).

(b) Materials are solid waste if they are abandoned by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(4) Sham recycled, as explained in Subsection R315-261-2(g)

(c) Materials are solid wastes if they are recycled-or accumulated, stored, or treated before recycling-as specified in Subsections R315-261-2(c)(1) through (4).

(1) Used in a manner constituting disposal.

(i) Materials noted with a “*” in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a “*” in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a “-” in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an “*” in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of Subsections R315-261-4(a)(17), or R315-261-4(a)(23), R315-261-4(a)(24) or R35-261-4(a)(27).

(4) Accumulated speculatively. Materials noted with a “*” in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

Use Energy Reclamation Speculative
Constituting recovery/ 261-2(c)(3) accumulation

	1	2	3	4
Disposal fuel except as provided in 261-2(c)(1)				
		(2)		
			261-4-(a)(17)	
			261-4(a)(23)	
			261-4(a)(24)	
			or	
			261-4(a)(27)	
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in 261-33	(*)	(*)	-	-
Scrap metal that is not excluded under 261-4(a)(13)	(*)	(*)	(*)	(*)

Note 1: All rule references in Table 1 are to R315.

Note 2: The terms “spent materials,” “sludges,” “by-products,” and “scrap metal” and “processed scrap metal” are defined in Section R315-261-1.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020; F021, unless used as an ingredient to make a product at the site of generation; F022; F023; F026; and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in Sections R315-261-20 through 24 and 30 through 35, except for brominated material that meets the following criteria:

- (i) The material shall contain a bromine concentration of at least 45%; and
- (ii) The material shall contain less than a total of 1% of toxic organic compounds listed in Rule R315-261 appendix VIII; and
- (iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance, hard piping.

(3) The Board shall 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):

- (i)(A) The materials are ordinarily disposed of, burned, or incinerated; or
- (B) The materials contain toxic constituents listed in appendix VIII of Rule R315-261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
- (ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

- (i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
- (ii) Used or reused as effective substitutes for commercial products; or
- (iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials shall be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Subsection R315-261-4(a)(17) apply rather than Subsection R315-261-2(e)(1)(iii).

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process described in Subsections R315-261-2(e)(1)(i) through (iii):

- (i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
- (ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
- (iii) Materials accumulated speculatively; or
- (iv) Materials listed in Subsections R315-261-2(d)(1) and (d)(2).

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing Sections 19-6-101 through 125 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall demonstrate that there

is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section R315-260-43.

R315-261-3. Definition of Hazardous Waste

(a) A solid waste, as defined in Section R315-261-2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Subsection R315-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Sections R315-261-20 through 24 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to Section R315-261-24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is listed in Sections R315-261-30 through 35 and has not been excluded from the lists in Sections R315-261-30 through 35 under Sections R315-260-.20 and R315-260-22.

(iii) (Reserved)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Sections R315-261-30 through 35 and has not been excluded from Subsection R315-261-3(a)(2) under Sections R315-260-20 and R315-260-22, Subsection R315-261-3(g), or Subsection R315-261-3(h); however, the following mixtures of solid wastes and hazardous wastes listed in Sections R315-261-30 through 35 are not hazardous wastes, except by application of Subsections R315-261-3(a)(2)(i) or (ii), if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in Section R315-261-31: benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents-Provided, That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into

the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system, 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, does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption shall use an aerated biological wastewater treatment system and shall use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section R315-261-31: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents-Provided That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system; 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; does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling

and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in Section R315-261-32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation-heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050; crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169; clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170; spent hydrotreating catalyst, EPA Hazardous Waste No. K171; and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in Sections R315-261-31 through R315-261-33, arising from de minimis losses of these materials. For purposes of this Subsection R315-261-3(a)(2)(iv)(D), de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations, e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-31 through R315-261-32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-30 through 35 shall either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Rule R315-261 appendix VII; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority shall be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-261-30 through 35, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in Section R315-261.32: wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that cannot be

demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (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), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in Section R315-261-32:organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156. Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (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), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to

cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Sections R315-261-30 through 35. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste; for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of Rule R315-261.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under Subsection R315-261-3(a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Sections R315-261-30 through 35, when the waste first meets the listing description set forth in R315-261-30 through 35.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in R315-261-30 through 35 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(c) Unless and until it meets the criteria of Subsection R315-261-3(d):

(1) A hazardous waste shall remain a hazardous waste.

(2)(i) Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Waste from burning any of the materials exempted from regulation by Subsection R315-261-6(a)(3)(iii) and (iv).

(C)(I) Nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces, as defined in Section R315-

260-10, that are disposed in solid waste landfills regulated under Rules R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified in the tables below for all constituents, and exhibit no characteristics of hazardous waste.

Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample -
TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15

Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Director for K061, K062 or F006 high temperature metals recovery residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under Rules R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the landfill receiving the waste changes. However, the generator or treater need only notify the Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under Rules R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in Section R315-261-32: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in Section R315-261-32: - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172.

(d) Any solid waste described in Subsection R315-261-3(c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Rule R315-268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under Sections R315-261-30 through 35, contains a waste listed under Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35, it also has been excluded from Subsection R315-261-3(c) under Sections R315-260-20 and R315-260-22.

(e) (Reserved)

(f) Notwithstanding Subsections R315-261-3(a) through (d) and provided the debris as defined in Rule R315-268 does not exhibit a characteristic identified in Sections R315-261-20 through 24, the following materials are not subject to regulation under Rules R315-260 through 266, R315-268, or R315-270:

(1) Hazardous debris as defined in Rule R315-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Section R315-268-45; persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in Rule R315-268 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)(1) A hazardous waste that is listed in Sections R315-261-30 through 35 solely because it exhibits one or more characteristics of ignitability as defined under Section R315-261-21, corrosivity as defined under Section R315-261-22, or reactivity as defined under Section R315-261-23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(2) The exclusion described in Subsection R315-261-3(g)(1) also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(c)(2)(i).

(3) Wastes excluded under Subsection R315-261-3(g) are subject to Rule R315-268, as applicable, even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under Subsection R315-261-4(b)(7) and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24 for which the hazardous waste listed in Sections R315-261-30 through 35 was listed. [

~~_____ (h)(1) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of Sections R315-266-210 through 360.~~

~~_____ (2) The exemption described in Subsection R315-261-3(h)(1) also pertains to:~~

~~_____ (i) Any mixture of a solid waste and an eligible radioactive mixed waste; and~~

~~_____ (ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.]~~

(3) Waste exempted under Section R315-261-3 shall meet the eligibility criteria and specified conditions in Sections R315-266-225 and R315-266-230, for storage and treatment, and in Sections R315-266-310 and R315-266-315, for transportation and disposal. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

R315-261-31. Lists of Hazardous Wastes - Hazardous Wastes from Non-Specific Sources.

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in R315-260 appendix IX which incorporates 40 CFR 260 appendix IX by reference.

Table 2
Hazardous Wastes From Non-specific Sources

Industry and EPA hazardous waste No. Generic:	Hazardous waste	Hazard Code
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more, by volume, of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F003	The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, alcohol, cyclohexanone, and	(I)*

~~methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more, by volume, of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures] methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures~~

F004 The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures (T)

F005 The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more, by volume, of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures (I,T)

- F006 Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating, segregated basis, on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum (T)
- F007 Spent cyanide plating bath solutions from electroplating operations (R,T)
- F008 Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process (R,T)
- F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (R,T)
- F010 Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process (R,T)
- F011 Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (R,T)
- F012 Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process (T)
- F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill (T)

unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in Sections R315-258-40, R315-264-301 or 40 CFR 265.301, which is adopted by reference. For the purposes of this listing, motor vehicle manufacturing is defined in Subsection R315-261-31(b)(4)(i) and Subsection R315-261-31(b)(4)(ii) [~~describes the recordkeeping requirements for motor vehicle manufacturing facilities~~]
Describes the Recordkeeping requirements for motor vehicle manufacturing facilities

- F020 Wastes, except wastewater and spent carbon (H)
from hydrogen chloride purification, from the production or manufacturing use[-](as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.
- F021 Wastes (except wastewater and spent carbon (H)
from hydrogen chloride purification) from the production or manufacturing use[-](as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives
- F022 Wastes (except wastewater and spent carbon (H)
from hydrogen chloride purification) from the manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tetra-, penta-, or hexachlorobenzenes under alkaline conditions
- F023 Wastes (except wastewater and spent carbon (H)
from hydrogen chloride purification) from the production of materials on equipment previously used for the production or

manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tri- and tetrachlorophenols. This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.

- F024 Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections R315-261.31 or 32. (T)
- F025 Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution (T)
- F026 Wastes, except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use, as a reactant, chemical intermediate, or component in a formulating process, of tetra-, penta-, or hexachlorobenzene under alkaline conditions (H)
- F027 Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations (H)

containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.

- F028 Residues resulting from the incineration or (T) thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027
- F032 Wastewaters, except those that have not come (T) into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section R315-261-35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes, i.e., F034 or F035, and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol
- F034 Wastewaters (except those that have not come (T) into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol
- F035 Wastewaters (except those that have not come (T) into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or

chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol

F037 Petroleum refinery primary oil/water/solids (T) separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units, and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under Subsection R315-261-4(a)(12)(i), if those residuals are to be disposed of

F038 Petroleum refinery secondary (emulsified) (T) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow,

sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing

F039 Leachate (liquids that have percolated (T) through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Sections R316-261-30 through 35. Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.

F999 Residues from demilitarization, treatment, (R,T,C,H) and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and

(A) the units employ a minimum of 6 hp per million gallons of treatment volume; and either

(B) the hydraulic retention time of the unit is no longer than 5 days; or

(C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(A) the unit is an aggressive biological treatment unit as defined in this subsection; and

(B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) floats are considered to be generated at the moment they are formed in the top of the unit.

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles, including light duty vans, pick-up trucks, minivans, and sport utility vehicles. Facilities shall be engaged in manufacturing complete vehicles, body and chassis or unibody, or chassis only.

(ii) Generators shall maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records shall include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators shall maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Director.

R315-261-39. Exclusions and Exemptions - Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage. The broken CRTs shall be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container, i.e., a package or a vehicle, that is constructed, filled, and closed to minimize releases to the environment of CRT glass, including fine solid materials.

(2) Labeling. Each container in which the used, broken CRT is contained shall be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-

contains leaded glass ” or “Leaded glass from televisions or computers.” It shall also be labeled: “Do not mix with other glass materials.”

(3) Transportation. The used, broken CRTs shall be transported in a container meeting the requirements of Subsections R315-261-39(a)(1)(ii) and (2).

(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in Subsection R315-261-39(c)(8). If they are used in a manner constituting disposal, they shall comply with the applicable requirements of Sections R315-266-20 through 23 instead of the requirements of Section R315-261-39.

(5) Exports. In addition to the applicable conditions specified in Subsections R315-261-39(a)(1) through (4), exporters of used, broken CRTs shall comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: “Attention: Notification of Intent to Export CRTs.”

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-39(a)(5)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-39(a)(5)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA shall forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA shall notify the exporter in writing. EPA shall also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter shall provide EPA with a written renotification of the change, except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained, except for changes to information about points of entry and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (a)(5)(i)(H), and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs shall accompany the shipment of CRTs. The shipment shall conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs shall renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with Subsection R315-261-39(a)(5)(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters shall keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:

(A) The name; EPA ID number, if applicable; and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are

significant penalties for submitting false information, including the possibility of fine and imprisonment.”

(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Section R315-260-10 are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of Subsection R315-261-39(a)(4).

(2) Processing.

(i) All activities specified in Subsections [~~R315-260-10-(23)~~](ii) and (iii) of the definition of CRT Processing in Section R315-260-10 shall be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Subsection R315-261-1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal shall comply with the requirements of Section R315-266-20 through 23 instead of the requirements of Section R315-261-39.

~~[(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:~~

~~—(A) The name, EPA ID number, if applicable, and mailing and site address of the exporter;~~

~~—(B) The calendar year covered by the report;~~

~~—(C) A certification signed by the CRT exporter that states: “I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”~~

~~—(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.]~~

R315-261-141. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Definitions of Terms as Used in Sections R315-261-140 Through 151.

The terms defined in 40 CFR 265.141(d), (f), (g), and (h), which are adopted by reference, have the same meaning in Sections R315-140 through 143 and R315-261-147 through 151 as they do in 40 CFR 265.141, which is adopted by reference.

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:		Date filed:		
State Admin Rule Filing Key:	157355			
Utah Admin. Code ref. (R no.):	R315-262-10			
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	
(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):				
Purpose, scope, and applicability				
Notice Type				
3. Type of notice:	Amendment			
Rule Purpose				
4. Purpose of the rule or reason for the change:	Change is to correct omissions in the rule as originally adopted.			
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes			
Rule Summary				
6. Summary of the rule or change:	Change adds language that was omitted form R315-262-10 when it was adopted.			
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes The rule changes will have no effect on the administration of the rule and will have no cost to the state.			
B) Local government:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes The rule changes will have no effect on the administration of the rule and will have no cost or savings to local government.			
C) Small businesses:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			

("small business" means a business employing fewer than 50 persons)
 The rule changes will have no effect on the administration of the rule and will have no cost or savings to small business.
 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)
 The rule changes will have no effect on the administration of the rule and will have no cost or savings to other persons.

Compliance Cost Information
 8. Compliance costs for affected persons:
 The rule changes will not affect the administration of the rule and will not have any cost to affected persons.

Department Head Comments
 9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 The rule changes will not affect the administration of the rule and will not have any cost or savings to business.
 B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

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) :
 19-6-105, 19-6-106

Incorporated Materials
 11. This rule adds, updates, or removes the following title of materials incorporated by references (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 --
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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) : 05/31/2016
 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): 06/07/2016
 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 Division 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")):
 hazardous waste

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule 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 title:	Scott Anderson Director	Date (mm/dd/yyyy): 03/28/2016
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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

Rule R315-262. Hazardous Waste Generator Requirements.

R315-262-10. Purpose, scope, and applicability.

(a) Rule R315-262 establish standards for generators of hazardous waste.

(b) Subsections R315-261-5(c) and (d) shall be used to determine the applicability of provisions of Rule R315-262 that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) A generator who treats, stores, or disposes of hazardous waste on-site shall only comply with the following Subsections of Rule R315-262 with respect to that waste: Subsection R315-262-11 for determining whether or not he has a hazardous waste, Subsection R315-262-12 for obtaining an EPA identification number, Subsection R315-262-34 for accumulation of hazardous waste, Subsection R315-262-40[](c) and (d) for recordkeeping, Subsection R315-262-43 for additional reporting, and if applicable, Subsection R315-262-70 for farmers.

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in Subsection R315-262[-]-58(a)(1) for recovery shall comply with Sections R315-262-80 through 89. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements at Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards in Rule R315-262 or Rules R315-270, 264, 265, or 268 with respect to such pesticides.

(g) A person who generates a hazardous waste as defined Rule R315-261 is subject to the compliance requirements and penalties prescribed in The Utah Solid and Hazardous Waste Act if he does not comply with the requirements of Rule R315-262.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

(i) Reserved

(j) Reserved

(k) Reserved

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through 216 are not subject to (for purposes of Subsection R315-262-10(1), the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in Section R315-262-200).

(1) The requirements of Section R315-262-11 or Subsection R315-262-34(c), for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through 216, and

(2) The conditions of Subsection R315-261-5(b), for conditionally exempt small quantity generators, except as provided in Sections R315-262-200 through 216.

(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:	Date filed:			
State Admin Rule Filing Key: 157356				
Utah Admin. Code ref. (R no.): R315-264-1				
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohm	801-536-0212	801-536-0222	rbohm@utah.gov	
(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):	Purpose, scope and applicability			
Notice Type				
3. Type of notice:	Amendment			
Rule Purpose				
4. Purpose of the rule or reason for the change:	Add two universal wastes that have been added to the universal waste rule and need to be added to R315-264 to complete the regulatory cycle. Also correct references.			
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes			
Rule Summary				
6. Summary of the rule or change:	Add antifreeze and aerosol cans to the list of universal wastes in R315-264-1. Correct references.			
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			
Antifreeze and aerosol cans have been previously included in the universal waste rule (R315-273). The change will add these wastes to the list of universal wastes in R315-264. As the rule is already in affect the change will have no cost or savings to the state.				
B) Local government:	Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes			
Local government will see no costs or savings as the rule is already in affect in R315-273.				
C) Small businesses:				

Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 Small business will see no costs or savings as the rule is already in affect in R315-273.
 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)
 Persons not listed above will see no costs or savings as the rule is already in affect in R315-273.

Compliance Cost Information
 8. Compliance costs for affected persons:
 There will be no costs to affected persons as the rule is already in affect in R315-273.

Department Head Comments
 9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 There will be no costs or savings to affected persons as the rule is already in effect in R315-273.
 B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

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) :
 19-6-106, 19-6-105

Incorporated Materials
 11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 05/31/2016
 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): 06/07/2016
 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 Division 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")):
 hazardous waste

File Information		
15. Attach an RTF document containing the text of this rule change (filename): There is a document associated with this rule 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 title:	Scott Anderson Director	Date (mm/dd/yyyy): 03/29/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

Rule R315-264. Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities.

R315-264-1. Purpose, scope and applicability.

(a) The purpose of Rule R315-264 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in Rule R315-264 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or 261.

(c) Reserved.

(d) The requirements of Rule R315-264 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by 40 CFR 144.14. Rule R315-264 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(e) The requirements of Rule R315-264 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under Rule R315-270.

(f) Reserved

(g) The requirements of Rule R315-264 do not apply to:

(1) The owner or operator of a facility permitted under Rules R315-301 through 320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Section R315-261-5;

(2) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), (3), and (4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through 23, 70, 80, or 100 through 112.

(3) A generator accumulating waste on-site in compliance with Section R315-262-34;

(4) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in Section R315-268-40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in Subsection R315-264-17(b).

(7) Reserved

(8) (i) Except as provided in Subsection R315-264-1(g) (8) (ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by Rule R315-264 shall comply with all applicable requirements of Sections R315-264-30 through 35, 37 and 50 through 56.

(iii) Any person who is covered by Subsection R315-264-1(g) (8) (i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Rule R315-264 and 40 CFR 122 and 123 and Rule R315-124 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

(10) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsections R315-264-17(b), 264-171, and 264-172 are complied with.

(11) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed below. These handlers are subject to regulation under Rule R315-273, when handling the below listed universal wastes.

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4; [~~and~~]

- (iv) Lamps as described in Section R315-273-5;
- (v) Antifreeze as described in Subsection R315-272-6(a); and
- (vi) Aerosol cans as described in Subsection R315-273-6(b).

(h) The requirements of Rule R315-264 apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved

(j) The requirements of Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do not apply to remediation waste management sites. However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through 19, 30 through 37, and 50 through 56, owners or operators of remediation waste management sites shall:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain all of the information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and 268, and shall be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site shall not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, shall not cause a violation of the requirements of Rule R315-264;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and shall remedy the problem before it leads to a human health or environmental hazard. Where a hazard is

imminent or has already occurred, the owner/operator shall take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of Rule R315-264, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under Sections R315-264-170 through 179, 190 through 200, 220 through 232, 250 through 259, 270 Through 283, 300 through 317, 340 through 351, and 600 through 603, the owner/operator shall design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of Subsection R315-264-18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with Subsections R315-264-221(c) and (d), 264-251(c) and (d), and 264-301(c) and (d) at the remediation waste management site, according to the requirements of Section R315-264-19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures shall address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan shall be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan shall explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and shall be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person

shall have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in Subsections R315-264-1(j)(2) through (j)(6) and (j)(9) through (j)(10); and

(13) Maintain records documenting compliance with Subsections R315-264-1(j)(1) through (j)(12).

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:		Date filed:		
State Admin Rule Filing Key:	157357			
Utah Admin. Code ref. (R no.):	R315-273			
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...			
Room no.:	Second Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3097			
Mailing address 1:	PO BOX 144880			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4880			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	
(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):	Standards For Universal Waste Management			
Notice Type				
3. Type of notice:	Amendment			
Rule Purpose				
4. Purpose of the rule or reason for the change:	Exempts state and federal facilities from cost estimates and financial assurance requirements.			
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes			
Rule Summary				
6. Summary of the rule or change:	The change to R315-273-13 and 33 to add the exemption for state and federal facilities using drum-top lamp crushers from the requirements for costs estimates and financial assurance.			
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:				
Affected:	<input type="radio"/> No <input checked="" type="radio"/> Yes			
Any state facility that uses drum-top lamp crushers will have reduced cost as they will not have to present cost estimates and provide financial assurance. The actual costs savings are unknown.				
B) Local government:				
Affected:	<input checked="" type="radio"/> No <input type="radio"/> Yes			
There will be no costs or savings to local government as the rule change will not affect them.				
C) Small businesses:				

Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 There will be no costs or savings to small business as the rule change will not affect them.
 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)
 There will be no costs or savings to persons not listed above as the rule change will not affect them.

Compliance Cost Information
 8. Compliance costs for affected persons:
 There will be no cost to any person as a result of the rule change.

Department Head Comments
 9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 There will be no costs to business as the rule change does not affect them.
 B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

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) :
 19-6-105, 19-6-106

Incorporated Materials
 11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 05/31/2016
 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): 06/07/2016
 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 Division 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")):
 hazardous waste

File Information		
15. Attach an RTF document containing the text of this rule change (filename): There is a document associated with this rule 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 title:	Scott Anderson Director	Date (mm/dd/yyyy): 03/29/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

Rule R315-273. Standards For Universal Waste Management.

R315-273-13. Standards For Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste - Waste management.

(a) Batteries. A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

- (i) Sorting batteries by type;
- (ii) Mixing battery types in one container;
- (iii) Discharging batteries so as to remove the electric charge;
- (iv) Regenerating used batteries;
- (v) Disassembling batteries or battery packs into individual batteries or cells;
- (vi) Removing batteries from consumer products; or
- (vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Pesticides. A small quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste

pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(b) (1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(b) (1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200 and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A small quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of Section R315-262-34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under Subsection R315-273-13(c) (2); and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24:

(A) Mercury or clean-up residues resulting from spills or leaks; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings, e.g., the remaining mercury-containing device.

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, and 270. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A small quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps provided that the small quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the small quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container designed specifically for crushing lamps;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall consist of a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) An employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) An employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of all mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The small quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing of the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-13(d)(6).

(7) The small quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-13(d)(6) using one of the options in Subsections R315-261-143(a) through (e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-13(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through 266 and 268.

(e) Antifreeze. A small quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(e)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200 and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or

component of a universal waste or accelerant to the environment as follows:

(1) A small quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) A small quantity handler of universal waste may puncture universal waste aerosol cans to remove and collect the contents of the aerosol can provided the handler:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;

(ii) Ensures that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture universal waste aerosol cans. This procedure shall include:

(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;

(B) operation and maintenance of the unit;

(C) segregation of incompatible wastes;

(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and

(E) waste characterization;

(iii) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;

(iv) Immediately transfers the contents of the universal waste aerosol can, or puncturing device if applicable, to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal

waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(4) (i) A small quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.

(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.

(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

R315-273-33. Standards For Universal Waste Management, Standards For Large Quantity Handlers Of Universal Waste - Waste Management.

(a) Batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;
(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;
(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or
(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Pesticides. A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-33(b) (1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-33(b) (1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200, and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A large quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows

evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of Section R315-262-34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under Subsection R315-273-33(c) (2); and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings, e.g., the remaining mercury-containing device.

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps provided that the large quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the large quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container designed specifically for crushing lamps;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall consist of a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) The employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) The employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of all mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The large quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-33(d)(6).

(7) The large quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-33(d)(6) using one of the options in Subsections R315-261-143(a) through (e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-33(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be

managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through 266 and 268.

(e) Antifreeze. A large quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(e) (1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e) (1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200 and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste or accelerant to the environment as follows:

(1) A large quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) A large quantity handler of universal waste may puncture universal waste aerosol cans to remove and collect the contents of the aerosol can provided the handler:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any

universal waste or component of universal waste or accelerant to the environment;

(ii) Ensures that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture universal waste aerosol cans. This procedure shall include:

(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;

(B) operation and maintenance of the unit;

(C) segregation of incompatible wastes;

(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and

(E) waste characterization;

(iii) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;

(iv) Immediately transfers the contents of the universal waste aerosol can, or puncturing device if applicable, to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(4)(i) A large quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.

(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.

(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous,

the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Proposed Rulemaking for Rules R313-19 and R313-22

April 14, 2016

What is the issue before the Board?	The Director is requesting Board approval of proposed changes to R313-19-13, <i>Exemptions</i> , and selected sections of R313-22, <i>Specific Licenses</i> , to incorporate comments received from the Nuclear Regulatory Commission (NRC) in a letter dated November 13, 2015 (letter attached). For compatibility with the corresponding federal radioactive materials regulations, the NRC requested the removal of selected references to the federal Atomic Energy Act and the correction of certain rule citations along with the proper location of a specific paragraph.
What is the historical background or context for this issue?	<p>As an Agreement State with the NRC, Utah is required to maintain rules that are compatible with the corresponding federal radioactive materials regulations promulgated by the NRC. Last September, the Division submitted to the NRC for its review for compatibility, changes to the state radiation control rules that were previously approved by the Board.</p> <p>The approved rule changes incorporated federal regulatory revisions published in the <i>Federal Register</i> on July 25, 2012 (77 FR 43666). The specific rule changes requested by the NRC are found in the table accompanying their letter. (See attached.)</p>
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain primacy from the Federal government. The proposed rule changes also meet existing DEQ and state rulemaking procedures.
Is Board action required?	Yes, Board action is required to publish the proposed rule changes in the <i>Utah State Bulletin</i> and start a 30-day public comment period.
What is the Division Director's recommendation?	The Director recommends Board approval of the rule changes for publication in the <i>Utah State Bulletin</i> and commencement of a 30-day public comment period. With the Board's approval, it is anticipated that the proposed rule changes will be published on May 1, 2016 with the comment period ending on June 1, 2016.
Where can more information be obtained?	For questions or additional information, please call Rusty Lundberg at (801) 536-4257.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Div of Waste Management
and Radiation Control

NOV 20 2015
DRC-2015-008268

November 13, 2015

Mr. Scott T. Anderson, Director
Division of Radiation Control
Department of Environmental Quality
195 North 1950 West
P.O. Box 144880
Salt Lake City, UT 84114-4880

Dear Mr. Anderson:

We have reviewed the final revisions to the Utah Radiation Control Rules, received by our office on September 23, 2015. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Spencer Wickham on November 6, 2015.

As a result of our review, we have five comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We have determined that if these regulations are revised, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when you revise your regulations to address our comments, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the location of any changes made by Utah, in response to our comments, and provide a copy to Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS. The SRS Data Sheet summarizes our knowledge of the status of other Utah regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the NMSS State Communication Portal: <https://scp.nrc.gov/rulemaking.html>.

S. Anderson

-2-

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Michelle Beardsley, State Regulation Review Coordinator, at (610) 337-6942 (Michelle.Beardsley@nrc.gov) or David Spackman at (301) 415-6389 (David.Spackman@nrc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "P. Henderson".

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. Utah SRS Data Sheet

COMPATIBILITY COMMENTS ON UTAH FINAL REGULATIONS

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	R313-19-13(2)(c)(ii)	30.19	B	<p>Self-luminous products containing tritium, krypton-85, or promethium-147</p> <p>Utah needs to remove the phrase "from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and" from R313-19-13(2)(c)(ii)(A).</p> <p>Utah needs to add R313-21 and R313-22 to, and remove R313-37 from the list of exempted regulations in R313-19-13(2)(c)(ii)(A). Utah should only exempt regulations in R313-19-13(2)(c)(ii)(A) that directly correspond to 10 CFR Parts 20, 30 through 36, and 39.</p> <p>Utah needs to make the changes described above in order to meet the Compatibility Category B designation assigned to 10 CFR 30.19.</p>

Enclosure 1

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	
2	R313-19-13(2)(c)(iii)	30.20	2012-4	B	<p>Gas and aerosol detectors containing byproduct material</p> <p>Utah needs to remove the phrase "from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and" from R313-19-13(2)(c)(iii)(A).</p> <p>Utah needs to remove R313-37 from the list of exempted regulations in R313-19-13(2)(c)(iii)(A). Utah should only exempt regulations in R313-19-13.(2)(c)(iii)(A) that directly correspond to 10 CFR Parts 19, 20, 30 through 36, and 39.</p> <p>Utah needs to make the changes described above in order to meet the Compatibility Category B designation assigned to 10 CFR 30.20.</p>
3	R313-19-13(2)(c)(v)	30.22	2012-4	B	<p>Certain industrial devices</p> <p>Utah needs to remove the phrase "from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and" from R313-19-13(2)(c)(v)(A).</p> <p>Utah needs to remove R313-37 from the list of exempted regulations in R313-19-13(2)(c)(v)(A). Utah should only exempt regulations in R313-19-13(2)(c)(v)(A) that directly correspond to 10 CFR Parts 19, 20, 30 through 36, and 39.</p> <p>Utah needs to make the changes described above in order to meet the Compatibility Category B designation assigned to 10 CFR 30.22.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	R313-22-32(6)	30.32(g)	2012-4	C	<p>Application for specific licenses</p> <p>Utah makes several references in R313-22-32(6) to the "information identified" or "specified" in R313-22-210. However, R313-22-210 does not identify or specify the essential information listed in 10 CFR 32.210(c), which is referenced in 10 CFR 30.32(g).</p> <p>Utah needs to change the reference in R313-22-32(6)(i)(B) from R313-22-210 to 10 CFR 32.210(c).</p> <p>Utah needs to change the second reference in R313-22-32(6)(ii) from R313-22-210 to 10 CFR 32.210(c).</p> <p>Utah needs to change the reference in R313-22-32(6)(ii)(A) from R313-22-210 to 10 CFR 32.210(c).</p> <p>Utah needs to make the changes described above in order to meet the Compatibility Category C designation assigned to 10 CFR 30.32(g).</p>
5	R313-22-75(4)(a)	32.51(a)	2012-4	B	<p>Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer</p> <p>Utah has two regulations in R313-22-75(4)(a) under the same citation, R313-22-75(4)(a)(iii). The addition of the text "the device has been registered in the Sealed Source and Device Registry" should be moved under R313-22-75(4)(a)(vi).</p> <p>Additionally, R313-22-75(4)(a)(iii)(D) should be renamed R313-22-75(4)(a)(iv), and R313-22-</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>75(4)(a)(iii)(E) should be renamed R313-22-75(4)(a)(v) to remain consistent with the rule structure of 10 CFR 32.51(a).</p> <p>Utah needs to make the changes described above in order to meet the Compatibility Category B designation assigned to 10 CFR 30.51(a).</p>

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:	Date filed:			
State Admin Rule Filing Key: 157374				
Utah Admin. Code ref. (R no.): R313-19-13				
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation			
Room no.:	Third 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 144850			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4850			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Rusty Lundberg	801-536-4257	801-533-4097	rlundberg@utah.gov	
(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):				
Exemptions				
Notice Type				
3. Type of notice: Amendment				
Rule Purpose				
4. Purpose of the rule or reason for the change: Incorporate changes requested by the U.S. Nuclear Regulatory (NRC) in a letter dated November 13, 2015 (ML15267 A359) to maintain compatibility with the corresponding federal radioactive materials regulations. As an Agreement State with the NRC, Utah is required to maintain rules that are compatible with those promulgated by the NRC. The proposed rule changes are required in order to maintain regulatory compatibility.				
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee. <input checked="" type="radio"/> No <input type="radio"/> Yes				
Rule Summary				
6. Summary of the rule or change: The NRC requested that selected references to the federal Atomic Energy Act be removed since the agency does not have the authority to allow exemptions from federal statute. Additionally, the NRC also requested the correction of certain rule citations for regulatory compatibility with the corresponding federal requirements.				
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to: A) State budget: Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes The proposed rule changes do not impact the state budget since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.				

<http://erules.rules.utah.gov/erules/secure/ruleFilingEdit.action?ruleId=157374>

4/6/2016

B) Local government:
 Affected: No Yes
 The proposed rule changes do not impact local government since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

C) Small businesses:
 Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 The proposed rule changes do not impact small businesses that may have a radioactive materials license since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

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)
 The proposed rule changes do not impact other businesses or local government entities that may have a radioactive materials license since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

Compliance Cost Information

8. Compliance costs for affected persons:
 The proposed rule changes do not impose any compliance costs for any radioactive materials licensees since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 The proposed rule changes incorporate federal radioactive materials revisions requested by the NRC regarding corrections to rule citations and selected references to federal law. The changes were requested in order to maintain regulatory compatibility with corresponding federal regulations promulgated by NRC. Consequently, there are no costs or savings to any Utah radioactive materials licensees.
 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) :
 19-3-104(4)

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 06/01/2016
 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):		06/10/2016
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 Division 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")):	radioactive materials, licensing	
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 title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 04/06/2016

<http://erules.rules.utah.gov/erules/secure/ruleFilingEdit.action?ruleId=157374>

4/6/2016

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in Subsections R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(iii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) diffuse sources of natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in Rules R313-19, R313-21 and R313-22 and Rules R313-32, R313-34, R313-36, and R313-38 to the extent that the person transfers:

(A) radioactive material contained in a product or material in concentrations not in excess of those specified in R313-19-70; and

(B) introduced into the product or material by a licensee holding a specific license issued by the U.S. Nuclear Regulatory Commission authorizing the introduction.

(C) The exemption in R313-19-13-2(a)(ii)(A) and R313-19-13-2(a)(ii)(B) does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(iii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-

19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1).

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) through (iv) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR Part 32 or by the Director pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 CFR Part 31.4 or equivalent regulations of a State is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns radioactive material. This exemption does not apply for diffuse sources of radium-226.

(v) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in R313-19-71, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise provided by these rules.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;
for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;
for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;
(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces
manufactured prior to November 30, 2007.

(B)(I) Static elimination devices which contain, as sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

(II) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(III) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR 31.3 (January 1, 2012) or equivalent regulations of the Commission or an Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission or Agreement State.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before June 9, 2010.

(D) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before June 9, 2010.

(E) Ionization chamber smoke detectors containing not more than 1 microcurie (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(F) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(G) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(G), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(ii) Self-luminous products containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in R313-19-13(2)(c)(ii)(C), any person is exempt ~~from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and~~ from the regulations in R313-15, R313-19, ~~R313-21, R313-22,~~ R313-32, R313-34, R313-36, ~~[R313-37,]~~ and R313-38 to the extent that such a person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 10 CFR 32.22 (2015), which license authorizes the initial transfer of the product for use.

(B) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under R313-19-13(2)(c)(ii)(A), should apply for a license under 10 CFR 32.22 (2015) and for a certificate of registration in accordance with 10 CFR 32.210 (2015).

(C) The exemption in R313-19-13(2)(c)(ii)(A) does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(D) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt ~~from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and~~ from the regulations in parts R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, ~~[R313-37,]~~ and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26 (2015), which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to 10 CFR 32.26 (2015) authorizing distribution to persons exempt from regulatory requirements.

(B) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a) of this section, should apply for a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26 (2015) and for a certificate of registration in accordance with R313-22-210 or equivalent regulations of an Agreement State.

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv)(B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Certain industrial devices.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt ~~[from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and]~~ from the regulations in parts R313-18, R313-15, R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, ~~[R313-37,]~~ and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 (2015), which license authorizes the initial transfer of the device for use under this rule. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(B) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under R313-19-13(2)(c)(v)(A), should apply for a license under 10 CFR 32.30 (2015) and for a certificate of registration in accordance with R313-22-210.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

KEY: licenses, reciprocity, transportation, exemptions

Date of Enactment or Last Substantive Amendment: August 26, 2015

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

NOTICE OF
PROPOSED RULE AMENDMENT

- 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 Division of Administrative Rules.

Rule Information				
DAR file no:	Date filed:			
State Admin Rule Filing Key:	157376			
Utah Admin. Code ref. (R no.):	R313-22			
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation			
Room no.:	Third 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 144850			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4850			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Rusty Lundberg	801-536-4257	801-533-4097	rlundberg@utah.gov	
(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):	Specific Licenses			
Notice Type				
3. Type of notice:	Amendment			
Rule Purpose				
4. Purpose of the rule or reason for the change:	Incorporate changes requested by the U.S. Nuclear Regulatory (NRC) in a letter dated November 13, 2015 (ML15267A359) to maintain compatibility with the corresponding federal radioactive materials regulations. As an Agreement State with the NRC, Utah is required to maintain rules that are compatible with those promulgated by the NRC. The proposed rule changes are required in order to maintain regulatory compatibility.			
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.	<input checked="" type="radio"/> No <input type="radio"/> Yes			
Rule Summary				
6. Summary of the rule or change:	The NRC requested revising selected rule citations in Section R313-22-32 to the corresponding federal radioactive materials regulations (10 CFR 32.210(c)) in order to maintain regulatory compatibility. Additionally, the NRC requested correcting an error in paragraph numbering as well as correcting the location of a paragraph referencing the Sealed Source and Device Registry within Section R313-22-75.			
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:	A) State budget:			
Affected:	<input checked="" type="radio"/> No <input type="radio"/> Yes			
The proposed rule changes do not impact the state budget since they are simply correcting selected rule citations, correcting paragraph numbering, and moving a paragraph referencing the Sealed Source and Device				

<http://erules.rules.utah.gov/erules/secure/ruleFilingEdit.action?ruleId=157376>

4/6/2016

Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

B) Local government:
 Affected: No Yes
 The proposed rule changes do not impact local government since they are simply correcting selected rule citations, correcting paragraph numbering, and moving a paragraph referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

C) Small businesses:
 Affected: No Yes
 ("small business" means a business employing fewer than 50 persons)
 The proposed rule changes do not impact small businesses that may have a radioactive materials license since they are simply correcting selected rule citations, correcting paragraph numbering, and moving a paragraph referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

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)
 The proposed rule changes do not impact other businesses or local government entities that may have a radioactive materials license since they are simply correcting selected rule citations, correcting paragraph numbering, and moving a paragraph referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

Compliance Cost Information

8. Compliance costs for affected persons:
 The proposed rule changes do not impose any compliance costs for any radioactive materials licensees since they are simply correcting selected rule citations, correcting paragraph numbering, and moving a paragraph referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:
 The proposed rule changes incorporate federal radioactive materials revisions requested by the NRC regarding rule citations corrections, paragraph numbering corrections, and the proper location of a selected paragraph. The changes were requested in order to maintain regulatory compatibility with corresponding federal regulations promulgated by NRC. Consequently, there are no costs or savings to any Utah radioactive materials licensees.

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) :
 19-3-104(4)

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (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) : 06/01/2016

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): 06/10/2016

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 Division 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")):
radioactive materials, specific licenses

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 title: Brad Johnson Deputy Director Date (mm/dd/yyyy): 04/06/2016

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-22. Specific Licenses.

R313-22-32. Filing Application for Specific Licenses.

- (1) Applications for specific licenses shall be filed on a form prescribed by the Director.
 - (2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.
 - (3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.
 - (4) An application for a license may include a request for a license authorizing one or more activities.
 - (5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.
 - (6)(i) Except as provided in R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---
 - (A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or
 - (B) Contain the information identified in R313-22-210]10 CFR 32.210(c) (January 1, 2015).
 - (ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in R313-22-210]10 CFR 32.210(c) (January 1, 2015), the application must include:
 - (A) All available information identified in R313-22-210]10 CFR 32.210(c) (January 1, 2015) concerning the source, and, if applicable, the device; and
 - (B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.
 - (iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.
 - (iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.
- (7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.
- (8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

~~(iii) the device has been registered in the Sealed Source and Device Registry.~~

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk;
active blood-forming organs;
gonads; or lens of eye 150.0 mSv (15 rems)

Hands and forearms;
feet and ankles;
localized areas of skin

averaged over areas no
larger than one square
centimeter 2.0 Sv (200 rems)
Other organs 500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

~~(E)~~(iv) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

~~(E)~~(v) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(vi) The device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable

interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

- (i) primary containment, or source capsule;
- (ii) protection of primary containment;
- (iii) method of sealing containment;
- (iv) containment construction materials;
- (v) form of contained radioactive material;
- (vi) maximum temperature withstood during prototype tests;
- (vii) maximum pressure withstood during prototype tests;
- (viii) maximum quantity of contained radioactive material;
- (ix) radiotoxicity of contained radioactive material; and
- (x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal;

and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-15-1202, and Subsection R313-21-22(4) or a copy

of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal;

and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report

must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a

state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

- (a) the applicant satisfies the general requirements of Section R313-22-33; and
- (b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

- (i) the applicant satisfies the general requirements specified in Section R313-22-33;
- (ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE

MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

- (ii) protection of primary containment,
- (iii) method of sealing containment,
- (iv) containment construction materials,
- (v) form of contained radioactive material,
- (vi) maximum temperature withstood during prototype tests,
- (vii) maximum pressure withstood during prototype tests,
- (viii) maximum quantity of contained radioactive material,
- (ix) radiotoxicity of contained radioactive material, and
- (x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

- (i) the applicant satisfies the general requirements specified in Section R313-22-33;
- (ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

- (iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

- (i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

- (ii) label or mark each unit to:

- (A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

- (B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

- (iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

- (iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

- (A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DWMRC-12; or
- (B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);
- (v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;
- (vi) provide certain other reports as follows:
- (A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);
- (B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),
- (C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,
- (D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and
- (E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and
- (vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
 Executive Summary
 REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE
 EnergySolutions LLC
 April 14, 2016

<p>What is the issue before the Board?</p>	<p>EnergySolutions LLC has requested a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of lithium-thionyl chloride batteries following macroencapsulation.</p>
<p>What is the historical background or context for this issue?</p>	<p>The Mixed Waste Facility has received one, 5-gallon bucket of spent lithium-thionyl chloride batteries.</p> <p>The land disposal regulations require that batteries containing lithium be deactivated prior to land disposal. Macroencapsulation technology requires the waste to be classified as debris (which is a material exceeding 60 mm) before that technology can be used.</p> <p>EnergySolutions proposes to treat this 5-gallon bucket by macroencapsulation (even though the batteries are smaller than 60 mm) in the Mixed Waste Landfill Cell. This method will isolate the waste from precipitation and potential leaching. This request is based on the fact that, in order to deactivate the batteries, they would first need to be shredded. This method of treatment creates additional hazards to the employees without the assurance that the batteries, based on their size and shape, would be shredded. Final disposal of the waste will occur in the Mixed Waste Landfill Cell at the Mixed Waste Facility.</p> <p>A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on March 1, 2016. The comment period began March 1, 2016 and ended March 30, 2016. No comments were received.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act and R315-2-13 of the Utah Administrative Code. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-13-1 (40 CFR 268.44(h)(2) by reference).</p>

Is Board action required?	Yes, this is an action item before the Board.
What is the Division Director's recommendation?	The Director recommends approval of this variance request based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method, and the rules would allow macroencapsulation of this waste if it contained slightly larger pieces.
Where can more information be obtained?	<p>For technical questions, please call Otis Willoughby (801) 536-0220.</p> <p>For legal questions, please call Raymond Wixom at (801) 536-0290.</p>



Management
Division

FEB 18 2016

DSHW-2016-005942

February 18, 2016

Mr. Scott T. Anderson
Director
Division of Solid and Hazardous Waste
P.O. Box 144880
Salt Lake City, UT 84114-4880

CD16-0034
RECEIVED

FEB 18 2016

Division of Solid and Hazardous Waste
Environmental Services

Subject: EPA ID Number UTD982598898 ✓
Request for a Site-Specific Treatment Variance
Treatment of Lithium Batteries

Dear Mr. Anderson:

EnergySolutions LLC hereby requests an exemption from the treatment standards of 40 CFR 268.40(a)(2) for lithium-thionyl chloride batteries. In accordance with Division of Waste Management and Radiation Control guidance and the associated Material Safety Data Sheet, the batteries retain the characteristic hazardous waste codes of ignitability (D001) and reactivity (D003).

This request is submitted in accordance with R315-13-1 (40 CFR 268.44 incorporated by reference), which may allow a site-specific variance from an applicable treatment standard provided the following condition is met:

40 CFR 268.44(h)(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible.

This request is submitted in accordance with the requirements of 40 CFR 260.20(b).

40 CFR 260.20(b)(1): This petition is being submitted by

EnergySolutions LLC
423 West 300 South, Suite 200
Salt Lake City, UT 84101

40 CFR 260.20(b)(2): EnergySolutions requests approval to macroencapsulate approximately one cubic foot of lithium-thionyl chloride batteries that retain the

characteristic codes D001 and D003. All actions requested in this variance will be performed in accordance with EnergySolutions' State-issued Part B Permit.

40 CFR 260.20(b)(3): EnergySolutions proposes that the batteries, after acceptance at the facility in accordance with EnergySolutions' State-issued Part B Permit, be macroencapsulated in accordance with permit requirements and disposed in the Mixed Waste Landfill Cell.

40 CFR 260.20(b)(4): The need and justification for this action are as follows.

This variance is being requested for one 5-gallon bucket of spent lithium-thionyl chloride batteries that retain characteristic codes from EnergySolutions generator 9113-01. In accordance with R315-13-1 (40 CFR 268.40 incorporated by reference), the batteries are required to be "deactivated" (DEACT) prior to disposal.

The most applicable method of deactivation would be macroencapsulation of the waste to isolate the waste (and its characteristics) from the environment. The macroencapsulation technology requires the waste to be classified as debris which is defined as a solid material exceeding 60 mm (~2.36 inches) in any dimension. However, the batteries have a maximum length less than two inches; therefore, they do not meet the definition of debris.

To deactivate the waste without using macroencapsulation would require the batteries be shredded, in order to release the characteristic contents from the battery enclosure, and the resulting fluff treated with chemicals to create a non-characteristic monolith. This method of treatment creates additional hazards by exposing the ignitable and reactive nature of the batteries to the atmosphere, causing potential unnecessary risks to personnel and the environment. Further, due to their size and shape, it is unlikely all of the batteries would be opened during the shredding process and a portion of the batteries would not be treated to their characteristic core.

Rather than risking the consequences of shredding, EnergySolutions proposes to macroencapsulate the batteries even though they do not meet the size requirement of debris for macroencapsulation. Macroencapsulation is a permitted process utilized at the Clive facility that significantly reduces the potential for migration (leaching) of waste. Macroencapsulation requires less handling of the waste, particular the hazardous internal

Mr. Scott Anderson
February 18, 2016
CD16-0034
Page 3

portion of the waste, and creates a final form for disposal that is protective of human health and the environment.

EnergySolutions requests that a variance be granted to allow the macroencapsulation treatment of approximately one cubic foot of hazardous lithium-thionyl chloride batteries that do not meet the size requirement for debris as is required for macroencapsulation.

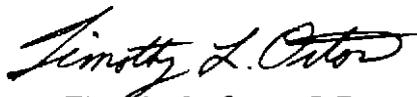
This waste is an ongoing waste stream from this generator who expects to have a minimal volume of lithium-thionyl chloride batteries for disposal each year. This variance was previously submitted to the Director in a letter dated December 16, 2014 (CD14-0284) and was approved by the Solid and Hazardous Waste Board on February 12, 2015.

The name, phone number, and address of the person who should be contacted to notify EnergySolutions of decisions by the Director is:

Mr. Vern Rogers
Manager, Compliance and Permitting
EnergySolutions LLC
423 West 300 South, Suite 200
Salt Lake City, UT 84101
(801) 649-2000

Should there be any questions to this request, please contact me at 801-649-2144.

Sincerely,



Timothy L. Orton, P.E.
Environmental Engineer

cc: Otis Willoughby, DSHW

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
 Executive Summary
 REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE
 EnergySolutions LLC
 April 14, 2016

<p>What is the issue before the Board?</p>	<p>EnergySolutions LLC has requested a site-specific treatment variance from the Utah Hazardous Waste Management Rules to dispose of High Concentration Arsenic Waste following macroencapsulation.</p>
<p>What is the historical background or context for this issue?</p>	<p>The Mixed Waste Facility has received approximately 105 cubic feet of Natural Gas Sweetener Filter Media. This waste, made of clay pellets, retains hazardous waste codes for arsenic, cadmium and benzene.</p> <p>EnergySolutions proposes to treat this waste by macroencapsulation in the Mixed Waste Landfill Cell following chemical stabilization of the other contaminants. Macroencapsulation will isolate the waste from precipitation and potential leaching.</p> <p>This request is based on the fact that the facility has attempted a variety of treatment formulas and has been unsuccessful in attaining treatment levels for the arsenic. The other contaminants have been treated below Land Disposal Restriction levels.</p> <p>A notice for public comment was published in the <i>Salt Lake Tribune</i>, the <i>Deseret News</i> and the <i>Tooele County Transcript Bulletin</i> on March 1, 2016. The comment period began March 1, 2016 and ended March 30, 2016. No comments were received.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act and R315-2-13 of the Utah Administrative Code. This is a one-time, site-specific variance from an applicable treatment standard as allowed by R315-13-1 (40 CFR 268.44(h)(2) by reference).</p>

Is Board action required?	Yes, this is an action item before the Board.
What is the Division/Director's recommendation?	The Director recommends approval of this variance request based on the following findings: the proposed alternative treatment method meets the regulatory basis for a variance, will be as safe to human health and the environment as the required method and the facility has made several unsuccessful attempts to treat the arsenic contaminants in the waste.
Where can more information be obtained?	For technical questions, please contact Otis Willoughby (801) 536-0220. For legal questions, please contact Raymond Wixom at (801) 536-0290.



Div of Waste Management
and Radiation Control

JAN 22 2016

DSHW - 2016 - 002241

January 22, 2016

Mr. Scott T. Anderson
Director
Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, UT 84114-4880

CD16-0019
RECEIVED
JAN 22 2016

DEPARTMENT OF
ENVIRONMENTAL QUALITY

Subject: EPA ID Number UTD982598898
Request for a Site-Specific Treatment Variance for
High Concentration Arsenic Waste

Dear Mr. Anderson:

EnergySolutions hereby requests an exemption from the treatment standards of 40 CFR 268.40(a)(2) for waste that contains high concentrations of arsenic (up to 2500 mg/L) that cannot be treated to the specified treatment standard.

This request is submitted in accordance with R315-13-1 (40 CFR 268.44 incorporated by reference) which allows a site-specific variance from an applicable treatment standard provided the following condition is met:

40 CFR 268.44(h)(1) It is not physically possible to treat the waste to the level specified in the treatment standard.

This request is submitted in accordance with the requirements of 40 CFR 260.20(b).

40 CFR 260.20(b)(1): This petition is being submitted by

EnergySolutions LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111

40 CFR 260.20(b)(2): EnergySolutions requests approval to stabilize, macroencapsulate and dispose, in EnergySolutions' Clive Facility Mixed Waste Landfill Cell, approximately 105 cubic feet of Natural Gas Sweetner Filter Media (clay pellets) that is manifested characteristically hazardous for arsenic (D004), cadmium (D006), and benzene (D018). The stabilization treatment process will meet Universal Treatment Standards (as described in R315-13, which incorporates 40 CFR 268) for all contaminants except arsenic. All actions requested in this variance will be performed in accordance with EnergySolutions' State-issued Part B Permit.

40 CFR 260.20(b)(3): EnergySolutions proposes that the stabilization treatment residue (which will meet all treatment standards except arsenic) be formed into monoliths and macroencapsulated in accordance with permit requirements, and disposed in the Mixed Waste Landfill Cell.

40 CFR 260.20(b)(4): The need and justification for this action are as follows.

This variance is being requested for approximately 105 cubic feet of Natural Gas Sweetner Filter Media waste that was received on September 25, 2015. The waste was profiled by the generator as a solid material with up to 5% aqueous liquids and contains arsenic at concentrations up to 2,500 mg/L. Upon receipt at the Clive Facility, Permit required samples were collected of both phases of the waste. Results of these analyses detected several metals, as well as benzene and toluene, above treatment standards; arsenic was detected at 69,700 mg/L in the aqueous liquid phase (a small portion of the waste) and 1,800 mg/L in the solid.

Using this data as a baseline, treatability studies were performed on this waste in accordance with Attachment II-1-1, *Waste Analysis Plan and Formula Development for Treatment Wastes*, in EnergySolutions' State-issued Part B Permit. Over the course of two months, eight separate treatability studies of increasing intensity were conducted. Both single phase and multiple phase formulas were attempted with all contaminants meeting treatment standards except arsenic. Arsenic was reduced from the baseline concentration to approximately 130 mg/L (a reduction factor of approximately 16) with a formula dilution up to 5:1 reagents to waste. This concentration is greatly reduced from the baseline concentration, but remained greater than 25 times the treatment standard of 5.0 mg/L.

40 CFR 268.44(h)(1) allows a variance if it can be demonstrated that because the "physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method." The treatment standard was developed using a finely grained soil-like material; this filter media is physically different in that it is coarser clay pellets; thereby making it more difficult for intimate reagent-waste contact to treat the high concentration arsenic. Furthermore, the results described above demonstrate that copious amounts of absorbent would be needed to meet the treatment standard, if it could be met. This would bring into question whether actual treatment was occurring or whether dilution was causing the reduction in arsenic concentration.

Mr. Scott Anderson
January 22, 2016
CD16-0019
Page 3

As an alternative to chemical treatment of arsenic to its treatment standard, EnergySolutions proposes to first treat the waste such that all contaminants other than arsenic meet their respective treatment standards and the treated waste is formed into solid monoliths, then macroencapsulate the monoliths in accordance with requirements in Attachment II-1-5, *Macroencapsulation Plan*, of the State-issued Part B Permit. Macroencapsulation is a permitted process that significantly reduces the potential for migration (leaching) of waste. This process would ensure protection of public health and the environment.

EnergySolutions requests that a variance be granted to allow macroencapsulation and land disposal of waste that will meet all treatment standards except the treatment standard for arsenic.

The name, phone number, and address of the person who should be contacted to notify EnergySolutions of decisions by the Director is:

Mr. Vern C. Rogers
Manager, Compliance and Permitting
EnergySolutions LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
(801) 649-2000

Should there be any questions to this request, please contact me at 801-649-2144.

Sincerely,



Timothy L. Orton, P.E.
Environmental Engineer

cc: Don Verbica, DWMRC

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.