

Summary of Proposed changes to R311, Petroleum Storage Tank Rules (2024)

Proposed changes would require the same leak detection and testing requirements for all Aboveground Petroleum Storage Tanks (APSTs) whether they are participating in the Environmental Assurance Program (EAP) or have financial assurance by another method. Companies offering an alternate form of financial assurance may have their own Leak Detection and Testing requirements for APSTs but DERR wants to ensure that all APSTs meet certain requirements at a minimum. This has always been the case for USTs. A change is proposed to rule to simplify the complexity of requiring spill prevention testing that works for USTs but doesn't always fit for APSTs. This requires spill prevention equipment on APSTs to meet fire code only and not require integrity testing. Another change would allow a delivery prohibition tag to be placed on a PST that fails a tightness test or has evidence of a leak. Other changes are proposed to fix minor errors and to clarify certain rules.

Summary of the Proposed Changes:

R311-201. Petroleum Storage Tanks: Certification Programs and UST Operator Training (Nonsubstantive Change)

- R311-201-2(1): Fix an error by changing 19-6-402(7)(b) to the correct reference 19-6-402(7)(a).
R311-201-2. Requirement for Certification
(1) a certified PST consultant is required as specified in Subsection 19-6-402(7)(~~a~~b).

R311-203. Petroleum Storage Tanks: Technical Standards.

- R311-203-2(6): Change "not in service" to "out of service" for clarity.
(6) The owner or operator of an APST that ~~was~~ is ~~out of~~ out of ~~not in~~ service before May 5, 2021,
- R311-203-2(6)(f): Move to its own section R311-203-2(8) where it fits better in context.
~~[(f) must notify local emergency responders of a spill or overfill exceeding 25 gallons within 24 hours.]~~
(8) The owner or operator of an APST must notify within 24 hours local emergency responders of a spill or overfill exceeding 25 gallons.
- R311-203-5(10): Require the Leak Detection and Testing Requirements for all APSTs and not just those on the Environmental Assurance Program (EAP). Insurance companies may have their own requirement but DERR wants to ensure that all APSTs meet certain requirements at a minimum.
(10) Leak Detection and Testing Requirements for APSTs~~[-using the EAP for financial responsibility]:~~
- R311-203-5(10)(b): Change rule to simplify the complexity of requiring spill prevention testing that works for USTs but doesn't always fit for APSTs.
(b) spill prevention equipment associated with an APST must meet the standards set forth in International Fire Code (IFC) 2306.6.2.6 referenced in the Utah State Fire Code adopted pursuant to Section 15A-5-103~~[-and be double-walled and monitored monthly];~~

~~or have an integrity test performed every three years. The test must meet the requirements of Subsection R311-203-5(2)].~~

R311-204. Petroleum Storage Tanks: Closure and Remediation. (Nonsubstantive Change)

- R311-204-3(3) add STI SP001 inspection criteria for smaller APSTs where API 653 does not apply. The intent of this rule was always meant to apply to all APSTs.
(3) Any removed APST that is to be reused as an APST must be recertified by the manufacturer of the tank or undergo a tank inspection, conducted by a qualified contractor, using a nationally recognized standard such as STI SP001 or API 653.

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

- R311-206-3(1)(b)(i): Delete the requirement for only those on the EAP to meet certain leak detection requirements.
~~[(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).]~~
- R311-206-4(6): Delete this subpart that lists the leak detection requirements for APSTs on the EAP because they can already be found in R311-203-5(10).
~~(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:
(a) before July 1, 2026, the owner or operator:
(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and
(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.
(b) on or after July 1, 2026, the owner or operator:
(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;
(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);
(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and
(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.~~
- R311-206-8(3) Change wording to clarify meaning
(3) For APSTs not in service after May 5, 2021, the director shall authorize the placement of a delivery prohibition tag [to be placed on the APST] as soon as practicable[~~after the determination that the APST was not in service after May 5, 2021~~].

- R311-206-8(4): This change allows a delivery prohibition tag to be placed on a PST that fails a tightness test or has evidence of a leak.
(4) For PSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the PST as soon as practicable after the determination that a release from a PST is ongoing. The determination may be made by:
 - (a) failed tests as defined by “PST Testing” in R311-200-1(ss); or
 - (b) visual presence, odors, inventory loss, or otherwise apparent contamination of environmental media.

State of Utah
Administrative Rule Analysis
Revised May 2023

NONSUBSTANTIVE CHANGE		
Title No. - Rule No. - Section No.		
Rule or Section Number:	R311-201	Filing ID: Office Use Only

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
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Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
Petroleum Storage Tanks: Certification Programs and UST Operator Training
3. Reason for the change:
This rule change fixes an incorrect reference to a statute in rule.
4. Summary of the change:
R311-201-2(1): Fix an error in this rule by changing 19-6-402(7)(b) to the correct reference 19-6-402(7)(a).

Agency Authorization Information

To the agency: The Office of Administrative Rules is responsible for setting the effective date of nonsubstantive changes (see Section R15-4-6). The agency does NOT file a notice of effective date.			
Agency head or designee and title:	Brent Everett, Director	Date:	05/09/2024

R311. Environmental Quality, Environmental Response and Remediation.

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

R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Requirement for Certification.

- (1) a certified PST consultant is required as specified in Subsection 19-6-402(7)(b).
- (a) no person shall provide or contract to provide the following services without having certification to conduct these activities:
 - (i) provide information, opinions, or advice relating to PST release management;
 - (ii) abatement;
 - (iii) investigation;
 - (iv) corrective action; or
 - (v) evaluation for a fee, or in connection with the services for which a fee is charged.
- (A) except as outlined in Subsection R311-204-5(2); and
- (B) except for releases from a hazardous substance PST system, as defined in 40 CFR 280.10.
- (b) a certified PST consultant must:
 - (i) make pertinent project management decisions;
 - (ii) ensure all aspects of work related to PSTs containing petroleum are performed in an appropriate manner; and

(iii) sign required documentation to be submitted to the director for work performed.

(c) any PST release abatement, investigation, or corrective action work performed by a person who is not certified or who is not working under the direct supervision of a certified PST consultant, and is performed for compliance with Utah PST rules, may be rejected by the director.

(2) UST inspector. No person shall conduct a PST inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct such activities.

(a) the director may issue a limited certification restricting the type of PST inspections the applicant can perform.

(3) UST tester. No owner or operator shall allow PST testing to be conducted on a PST under their ownership or operation unless the person conducting the PST testing is certified according to Rule R311-201.

(a) except as outlined in Section R311-201-3, no person shall conduct PST testing without having certification to conduct such activities.

(b) an individual certified under Rule R311-201 as a UST installer may:

(i) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;

(ii) perform an overflow device inspection to meet the requirements of 40 CFR 280.35(a)(2);

(iii) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i), 280.40(a)(3)(ii), 280.40(a)(3)(iv), and 280.40(a)(3)(v); and

(iv) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

(c) a PST owner or operator may:

(i) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used; and

(ii) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

(d) certification by the director under this rule applies only to the specific PST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by equivalent training as determined by the director, for the following types of testing:

(i) tank, line, and leak detector testing;

(ii) interstitial tests of tanks and piping; and

(iii) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.

(e) the director may issue a limited certification restricting the type of PST testing the applicant can perform.

(4) Certified sampler. No person shall conduct environmental media sampling for determining levels of contamination which may have occurred from regulated PSTs without having certification to conduct these activities.

(a) no owner or operator shall allow any environmental media sampling for determining levels of contamination which may have occurred from regulated PSTs to be conducted on a tank under their ownership or operation unless the person conducting the environmental media sampling is certified according to Rule R311-201.

(5) UST installer. No person shall install a PST without having certification or the on-site supervision of an individual having certification to conduct these activities.

(a) no owner or operator shall allow the installation of a PST, or any component thereof, under their ownership or operation unless the person installing the PST is certified according to Rule R311-201.

(b) the director may issue a limited certification restricting the type of PST installation the applicant can perform.

(6) UST remover. No person shall remove a PST without having certification or the on-site supervision of an individual having certification to conduct these activities.

(a) no owner or operator shall allow the removal of a PST, or any component thereof, under their ownership or operation unless the person conducting the PST removal is certified according to Rule R311-201.

R311-201-3. Eligibility for Certification.

(1) Certified PST consultant.

(a) training. For initial and renewal certification, an applicant must meet:

(i) Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law; and

(ii) within a six-month period before application, complete an approved training course or equivalent in a program approved by the director to provide training to include the following areas:

(A) state and federal statutes;

(B) rules and regulations;

(C) environmental media sampling; and

(D) department policies.

(b) experience. Each applicant must provide with the application a signed statement or other evidence demonstrating:

(i) three years, within the past seven years, of appropriately related experience in PST release abatement, investigation, and corrective action; or

(ii) an equivalent combination of appropriate education and experience, as determined by the director.

(c) education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(i) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education or experience as determined by the director;

(ii) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act, or equivalent certification as determined by the director; or

(iii) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the director.

(d) initial certification examination. Each applicant who is not certified pursuant to Section R311-201-4 must successfully pass an initial certification examination or equivalent, administered under the direction of the director.

(i) the director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-3(1)(a).

(e) renewal certification examination. Certified PST consultants seeking to renew their certification pursuant to Section R311-201-5 must successfully pass a renewal certification examination, or equivalent administered under the direction of the director.

(i) the director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-3(1)(a).

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) examination for revoked or expired certification. Any applicant who is not a certified PST consultant on the date the renewal certification examination is given because the consultant's prior certification was revoked or expired before completing a renewal application, must successfully pass the initial certification examination administered under Subsection R311-201-3(1)(d).

(2) UST inspector.

(a) training. For initial certification, an applicant must have successfully completed a PST inspector training course or equivalent within the six-month period before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

(A) corrosion;

(B) geology;

(C) hydrology;

(D) tank handling;

(E) tank testing;

(F) product piping testing;

(G) disposal;

(H) safety;

(I) sampling methodology;

(J) state site inspection protocol;

(K) state and federal statutes; and

(L) Utah PST rules and regulations.

(ii) renewal certification training will be established by the director.

(iii) the applicant must provide documentation of training with the application.

(b) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(2)(a), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(3) UST tester.

(a) financial assurance. An applicant or applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers PST testing and which, in combination, represent an unencumbered value of the largest PST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater.

(i) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the certification application.

(b) training. For initial certification, an applicant must complete a PST tester's training course within the six-month period before application, in a program approved by the director, to provide training to include applicable and related areas of state and federal statutes, rules, and regulations.

(i) renewal certification training will be established by the director.

(A) the applicant must provide documentation of training with the application.

(ii) for initial certification to perform the types of testing specified in Subsection R311-201-2(3), an applicant must have successfully passed a training course conducted by the manufacturer of the PST testing equipment that they will be using, or a training course determined by the director to be equivalent to the manufacturer training, in the correct use of the equipment and testing procedures required to operate the PST test system.

(iii) an applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the PST testing equipment that they will be using, or training as determined by the director to be equivalent to the manufacturer training, in the correct use of the equipment and testing procedures required to operate the PST test system.

(A) for renewal certification, refresher training, or equivalent must be completed within one year before the expiration date of the certificate.

(iv) cathodic protection testing. For initial and renewal of certification, the applicant must provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12 with the application.

(c) performance standards of equipment. An applicant must submit documentation that demonstrates the PST testing equipment used by the applicant meets the performance standards specified in Subsection R311-200-1(2)(ss)(v).

(i) this documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the director and submitted at the time of application for certification.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(3)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(4) Certified sampler.

(a) training. For initial certification an applicant must successfully complete a petroleum storage tank environmental media sampler training course or equivalent within the six-month period before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) chain of custody;
- (B) decontamination;
- (C) EPA testing methods;
- (D) environmental media sampling protocol;
- (E) preservation of samples during transportation;
- (F) coordination with Utah certified laboratories; and
- (G) state and federal statutes, rules, and regulations.
- (ii) renewal certification training will be determined by the director.
- (A) the applicant shall provide documentation of training with the application.
- (b) certification examination. An applicant must successfully pass a certification examination administered under the direction of the

director.

(i) the director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-3(4)(a), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(5) UST installer.

(a) financial assurance. An applicant or the applicant's employer must have insurance, surety bonds, liquid company assets, or other appropriate kinds of financial assurance which covers PST installation and which, in combination, represents an unencumbered value of not less than the largest PST installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) evidence of financial assurance shall be provided with the application.

(ii) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the application.

(b) training. For initial certification, an applicant must have successfully completed a PST installer training course or equivalent within the six-month period before the application.

(i) the training course must be approved by the director, and shall include instruction in the following areas:

- (A) tank installation;
- (B) pre-installation tank testing;
- (C) product piping testing;
- (D) excavation;
- (E) anchoring;
- (F) backfilling;
- (G) secondary containment;
- (H) leak detection methods;
- (I) piping;
- (J) electrical; and
- (K) state and federal statutes, rules, and regulations.

(ii) the applicant must provide documentation of training with the application.

(c) experience. Each applicant must provide with their application a sworn statement or other evidence that they have actively participated in a minimum of three PST installations.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(5)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) UST remover.

(a) financial assurance. An applicant or the applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers PST removal and which, in combination, represents an unencumbered value of not less than the largest PST removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) evidence of financial assurance shall be provided with the application.

(ii) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the application.

(b) training. For initial certification, an applicant must have successfully completed a PST remover approved training course or equivalent within the six-month period before the application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) tank removal;
- (B) tank removal safety practices; and
- (C) state and federal statutes, rules, and regulations.

(ii) the applicant must provide documentation of training with the application.

(c) experience. Each applicant must provide with their application a sworn statement or other evidence that they have actively participated in a minimum of three PST removals.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(6)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-4. Application for Certification.

(1) Any individual may apply for certification by paying any applicable fees and by submitting an application to the director to demonstrate that the applicant

- (a) meets applicable eligibility requirements specified in Section R311-201-3; and

- (b) will maintain the applicable performance standards specified in Section R311-201-6 after receiving a certificate.
- (2) Applications submitted under Subsection R311-201-4(1) shall be reviewed by the director for determination of eligibility for certification.
 - (a) if the director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the standards described in Section R311-201-6, the director shall issue to the applicant a certificate.
 - (3) Certification for certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8.
 - (a) certificates shall be subject to periodic renewal pursuant to Section R311-201-5.

R311-201-5. Renewal.

- (1) A certificate holder may apply for certificate renewal not more than six months before the expiration date of the certificate by:
 - (a) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the applicable performance standards specified in Section R311-201-6;
 - (b) paying any applicable fees; and
 - (c) passing a certification renewal examination.
- (2) If the director determines that the applicant meets the applicable eligibility requirements of Section R311-201-3 and the applicable performance standards of Section R311-201-6, the director shall reissue the certificate to the applicant.
- (3) Renewal certificates shall be issued for a period equal to the initial certification period and shall be:
 - (a) subject to inactivation under Section R311-201-8; and
 - (b) subject to revocation under Section R311-201-9.
- (4) Any applicant who has a certification which has been revoked or expired for more than two years before submitting a renewal application must successfully satisfy the training and certification examination requirements for initial certification under Section R311-201-3 for the applicable certificate before receiving the renewal certification.
 - (a) except as provided in Subsection R311-201-3(1)(f) for certified PST consultants.

R311-201-6. Standards of Performance.

- (1) Individuals who are certified in accordance with Rule R311-201 must:
 - (a) display the certificate upon request;
 - (b) comply with all local, state, and federal laws, rules, and regulations regarding the PST activity for which certification is granted;
 - (c) report the discovery of any release caused by or encountered in the course of performing the PST activity for which certification is granted to the director, the local health district, and the local public safety office within 24 hours.
 - (i) certified PST consultants and certified samplers must report the discovery of any release caused by or encountered in the course of performing environmental media sampling for compliance with Utah PST rules, or report the results indicating that a release may have occurred, to the director, the local health district, and the local public safety office within 24 hours.
 - (d) not participate in fraudulent, unethical, deceitful, or dishonest activity with respect to a certificate application or performance of work for which certification is granted; and
 - (e) not participate in any other regulated certification program activities without meeting all requirements of that certification program.
- (2) The director may audit or commission an audit of records which support eligibility for certification, or performance of work for which certification is granted, at any time.
 - (a) audits may be determined by random selection or for specific reasons, including suspicion or discovery of inaccuracies on an application for certification or performance of substandard work for which certification is granted, or deficiencies in complying with regulations.
- (3) Certified individuals must, in addition to meeting the performance standards in Subsection R311-201-6(1), comply with the following:
 - (a) certified PST consultant. An individual who provides PST consulting services in the state must:
 - (i) provide, or shall associate appropriate personnel to provide a high level of experience and expertise in release abatement, investigation, or corrective action;
 - (ii) perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;
 - (iii) perform work and submit documentation in a timely manner;
 - (iv) review and certify by signature any documentation submitted to the director in accordance with PST release-related compliance; and
 - (v) ensure and certify by signature pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a certified PST consultant.
 - (b) UST inspector. An individual who performs PST inspecting for the Division of Environmental Response and Remediation shall:
 - (i) conduct inspections of PSTs and records to determine compliance with this rule only as authorized by the director.
 - (c) UST tester. An individual who performs PST testing in the state must:
 - (i) perform work in a manner that does not cause a release of the contents of the tank;
 - (ii) assure that operations of PST testing which are critical to the integrity of the system and to the protection of the environment are supervised by a certified person; and
 - (iii) perform work in a manner that the integrity of the PST system is maintained.
 - (d) UST installer. An individual who performs PST installation or repair in Utah must:
 - (i) be certified to assure the proper installation of all elements of PST systems which are critical to the integrity of the system and to the protection of the environment, including:
 - (A) pre-installation tank testing;
 - (B) tank site preparation including anchoring, tank placement, and backfilling;
 - (C) cathodic protection installation, service, or repair;
 - (D) vent and product piping assembly;
 - (E) fill tube attachment;
 - (F) installation of tank manholes;
 - (H) secondary containment construction; and
 - (ii) notify the director as required by Subsection R311-203-3(1) before installing or upgrading an PST.

- (e) UST remover. An individual who performs PST removal in the state must:
 - (i) assure that operations of tank removal which are critical to safety and to the protection of the environment which includes:
 - (A) removal of soil adjacent to the tank;
 - (B) disassembly of pipe;
 - (C) final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site must be supervised by a certified person; and
 - (ii) not proceed to close a regulated PST without an approved closure plan, except as outlined in Subsection R311-204-2(2).

R311-201-7. Denial of Certification and Appeal of Denial.

(1) Any individual whose application or renewal application for certification or certification renewal is denied will be provided with a written documentation by the director specifying the reason or reasons for denial.

- (a) an applicant may appeal the determination using the procedures specified in Section 19-1-301.5, et seq., and Rule R305-7.

R311-201-8. Inactivation of Certification.

(1) If an applicant was certified based upon their employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer.

(2) If the employer loses their financial assurance or the applicant leaves the employer, their certification will automatically be deemed inactive and they will no longer be certified for purposes of this rule.

(3) Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees.

(4) Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

(1) Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-3 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked.

- (a) procedures for revocation are specified in Rule R305-7.

R311-201-10. Reciprocity.

(1) If the director determines that another state's certification program is equivalent to the certification program referred to in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, the director may issue a Utah certificate.

(a) The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-4(3), whichever occurs first.

R311-201-12. UST Operator Training and Registration.

(1) To meet the operator training requirement 42 USC Section 6991i of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility must have UST facility operators that are trained and registered according to the requirements of this section.

(2) Each facility must have three classes of operators: A, B, and C.

(a) a facility may have more than one person designated for each operator class.

(b) an individual acting as a Class A or B operator may do so for more than one facility.

(3) The UST owner or operator must provide documentation to the director to identify the Class A, B, and C operators for each facility.

(a) if an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all applicable state and federal statutes, rules, and regulations.

(4) New Class A and B operators must be trained and registered within 30 days of assuming responsibility for an UST facility.

(5) New Class C operators must be trained before assuming the responsibilities of a Class C operator.

(6) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(6)(b).

(a) the Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator must:

(i) have a general knowledge of UST systems;

(ii) ensure that UST records are properly maintained according to 40 CFR 280;

(iii) ensure that yearly UST fees are paid;

(iv) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(v) make financial responsibility documents available to the director as required; and

(vi) ensure that Class B and Class C operators are trained and registered.

(b) an owner or operator may designate a third-party Class B operator as a Class A operator if:

(i) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(ii) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(iii) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(7) The Class B operator must implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems.

(a) the Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator must:

(i) ensure that on-site UST operator inspections are conducted according to the requirements of Section R311-203-7;

(ii) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(iii) ensure that the status of the UST system is monitored for alarms and unusual operating conditions that may indicate a release;

(iv) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(7)(iii), if it is not reported as a suspected release according to 40 CFR 280.50;

(v) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

- (vi) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;
 - (vii) be on site for facility compliance inspections, or designate another individual to be on site for inspections;
 - (viii) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and
 - (ix) ensure that Class C operators are trained and registered, and are on site during operating hours.
- R311-201-12(10) and must:
- (a) be certified in accordance with Rule R311-201 as:
 - (i) a UST tester; or
 - (ii) a UST installer as either a general installer or a service or repair technician; or
 - (b) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.
 - (9) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator must:
 - (a) be present at the facility at all times during normal operating hours;
 - (b) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;
 - (c) properly respond to alarms, spills, and overfills;
 - (d) notify Class A operators, Class B operators, or both, and appropriate emergency responders when necessary; and
 - (e) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.
 - (10) Operator training and registration.
 - (a) training and testing.
 - (i) applicants for Class A and B operator registration must successfully complete an approved operator training course within the six-month period before application.
 - (ii) the training course must be approved by the director, and shall include instruction in the following:
 - (A) notification;
 - (B) temporary and permanent closure;
 - (C) installation permitting;
 - (D) UST requirements of the 2005 Energy Policy Act;
 - (E) Class A, B, and C operator responsibilities;
 - (F) spill prevention;
 - (G) overfill prevention;
 - (H) UST release detection;
 - (I) corrosion protection;
 - (J) recordkeeping requirements;
 - (K) emergency response;
 - (L) product compatibility;
 - (M) Utah PST rules and regulations;
 - (N) UST financial responsibility; and
 - (O) delivery prohibition.
 - (iii) applicants for Class A and B operator registration must successfully pass a registration examination authorized by the director.
 - (A) the director shall determine the content of the examination.
 - (iv) an individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(10)(a)(i) and R311-201-12(10)(a)(iii) by completing the following within the six-month period before application:
 - (A) successfully passing a nationally recognized UST operator examination approved by the director; and
 - (B) successfully passing a Utah PST rules and regulations examination authorized by the director.
 - (v) the director shall determine the content of the examination.
 - (vi) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.
 - (b) registration application.
 - (i) applicants for Class A and B operator registration must:
 - (A) submit a registration application to the director;
 - (B) document proper training; and
 - (C) pay any applicable fees.
 - (ii) Class C operators shall be designated by a Class B operator.
 - (iii) the Class B operator must maintain a list identifying the Class C operators for each PST facility. The list must identify:
 - (A) each Class C operator;
 - (B) the date of training; and
 - (C) the trainer.
 - (iv) identification on the list serves as the operator registration for Class C operators.
 - (v) a registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.
 - (vi) Class A and B registration shall be effective for a period of three years, and shall not lapse or become inactive if the registered operator leaves the employment of the company under which the registration was obtained.
 - (c) renewal of registration.
 - (i) Class A and B operators shall apply for renewal of registration not more than six months before the expiration of the registration by:
 - (A) submitting a completed application form;
 - (B) paying any applicable fees; and
 - (C) documenting successful completion of any re-training required by Subsection R311-201-12(10)(d).

(ii) if the director determines that the operator meets the requirements for registration, the director shall renew the applicant's registration for a period equal to the initial registration.

(iii) any applicant for renewal who has a registration that has been expired for more than two years before submitting a renewal application must successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(10)(a) before receiving the renewal registration.

(d) re-training.

(i) a Class A operator is subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility; or

(C) failure to ensure that Class B and C operators are trained and registered.

(ii) a Class B operator is subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document compliance, as determined by the Technical Compliance Rate;

(I) Technical Compliance Rate is determined using the EPA "UST and LUST Performance Definitions as of October 2018" and incorporated by reference.

(B) failure to perform UST operator inspections required by Section R311-203-7; or

(C) failure to ensure that Class C operators are trained and registered, and are on site during operating hours.

(iii) to be re-trained, Class A and Class B operators must successfully complete the appropriate Class A or B operator training course and examination, or must complete an equivalent re-training course and examination approved by the director.

(iv) Class A and B operators must be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the director within 30 days of the re-training.

(A) if the documentation is not received by the director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse.

(B) to re-register, the operator shall meet the requirements of Subsections R311-201-12(10)(a) and R311-201-12(10)(b).

(v) if a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsection R311-201-12(10)(d)(i) or R311-201-12(10)(d)(ii), re-training is not required if the Class A or B operator successfully completes and documents re-training under Subsection R311-201-12(10)(d) for a prior determination of non-compliance that occurred during the previous nine months.

(11) Reciprocity.

(a) if the director determines that another state's operator training program is equivalent to the operator training program provided in this rule, the director may accept an applicant's Class A or Class B registration application, provided that the applicant:

(i) submits a completed application form;

(ii) passes the Utah PST rules and regulations examination referenced in Subsection R311-201-12(10)(a)(iv)(B); and

(iii) submits payment of any applicable registration fees.

(b) the Class A or Class B registration is valid until the Utah registration expiration described in Subsection R311-201-12(10)(b)(vi).

KEY: hazardous substances, administrative proceedings, underground storage tanks, petroleum storage tanks, revocation procedures

Date of Last Change: 2024[July 15, 2022]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

R311-203

Filing ID: Office Use Only

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room number:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state and zip:	Salt Lake City, Utah 84114-4840	
Contact persons:		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Morgan Atkinson	801-979-2512	mpatikson@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
Petroleum Storage Tanks: Technical Standards.
3. Purpose of the new rule or reason for the change:
The purpose of this rule change is to allow the agency to continue issuing certificates of compliance (COC) to all regulated facilities, as well as to clarify some wording and make the rule more concise and easier for the regulated community to understand. Leak detection and testing requirements are essential for the agency to continue issuing COCs for Aboveground Petroleum Storage Tanks (APSTs) and brings parity with the existing requirements for Underground Storage Tanks (USTs) and APSTs participating in the Environmental Assurance Program (EAP). Additionally, the agency has found some of the spill prevention testing requirements are not applicable for all regulated PSTs, so the requirement is removed where not applicable.
4. Summary of the new rule or change:
Clarifying R311-203-2(6) by changing "is not in service" to "was out of service". Moving R311-203-2(6)(f) to its own section R311-203-2(8) where it fits better in context. Removing the wording from R311-203-5(10) that requires certain Leak Detection and Testing for only APSTs using EAP as their financial responsibility mechanism and now will apply to all APSTs. Modify wording in R311-203-5(10)(b) to remove the periodic testing requirement for spill prevention equipment on APSTs. The spill prevention standard in International Fire Code is still applicable.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
R311-203-5(10): There is no anticipated cost or savings to the state budget because all state PST facilities are required by statute to be on the EAP and meet these leak detection standards.
R311-203-5(10)(b): There is a direct fiscal benefit to state owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 30 facilities with APSTs owned by state government that participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$9,000 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.
Other changes will have no anticipated cost or savings to the state budget, because they just fix minor errors and clarify certain

rules.

B) Local governments:

R311-203-5(10) This proposed rule change is not expected to have any fiscal impacts on local government revenues or expenditures because Insurance Companies offering an alternate form of Financial Assurance will likely required them to meet similar leak detection standards.

The fiscal cost to meet the requirements for July 1, 2026 is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards that are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

R311-203-5(10)(b): There is a direct fiscal benefit to local government owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 22 facilities with APSTs owned by local governments that participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$6,600 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the local government's budget, because they just fix minor errors and clarify certain rules.

C) Small businesses ("small business" means a business employing 1-49 persons):

R311-203-5(10) This proposed rule change is not expected to have any fiscal impacts on small businesses revenues or expenditures because Insurance Companies offering an alternate form of Financial Assurance will likely required them to meet similar leak detection standards.

The fiscal cost to meet the requirements for July 1, 2026 is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

R311-203-5(10)(b): There is a direct fiscal benefit to small business owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 100 facilities with APSTs owned by small businesses that participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$30,000 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the small businesses budget, because they just fix minor errors and clarify certain rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

R311-203-5(10) This proposed rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures because Insurance Companies offering an alternate form of Financial Assurance will likely required them to meet similar leak detection standards.

The fiscal cost to meet the requirements for July 1, 2026 is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

R311-203-5(10)(b): There is a direct fiscal benefit to non-small business owned facilities with APSTs which will not be required to test their spill buckets every 3 years. There are approximately 80 facilities with APSTs owned by non-small business that participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total benefit for all these facilities combined is \$18,000 every 3 years. This estimate was reached using the average contractor cost for a facility with 3 APSTs being \$300 every 3 years.

Other changes will have no anticipated cost or savings to the non-small businesses budget, because they just fix minor errors and clarify certain rules.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

R311-203-5(10)(b): Benefit to affected persons for not requiring spill bucket (SB) tests is \$100/SB every 3 years.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
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State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$9,000
Local Governments	\$0	\$0	\$6,600
Small Businesses	\$0	\$0	\$30,000
Non-Small Businesses	\$0	\$0	\$18,000
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$63,600
Net Fiscal Benefits	\$0	\$0	\$63,600

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
The Executive Director of Department of Environmental Quality, Kim Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 19-6-105	Section 19-6-403	Section 19-6-408

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) 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 the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) 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 the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

Public Notice Information

8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2024	
B) A public hearing (optional) will be held:		
Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
06/10/2024	02:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116

		Room 1015

To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

9. This rule change MAY become effective on: 07/12/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. 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 head or designee and title:	Brent Everett, Director	Date:	05/09/2025
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R311. Environmental Quality, Environmental Response and Remediation.

R311-203. Petroleum Storage Tanks: Technical Standards.

R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

- (1) The owner or operator of an UST must notify the director when:
 - (a) new USTs are brought into use;
 - (b) the owner or operator changes;
 - (c) changes are made to the tank or piping system; and
 - (d) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed, or upgraded.
- (2) Notifications must be submitted on the current approved notification form.
- (3) Notifications submitted to meet the requirements of Subsection R311-203-2(1) shall be submitted within 30 days of the completion of the work or the change of ownership.
- (4) To satisfy the requirement of Section 19-6-407 the certified installer shall:
 - (a) complete the appropriate section of the form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or
 - (b) provide separate notification to the director within 60 days of the completion of the installation.
- (5) The owner or operator of an APST that is in service on or after May 5, 2021, must notify the director according to the requirements of Subsection 19-6-407(2).
- (6) The owner or operator of an APST that ~~is~~was ~~not in~~out of service before May 5, 2021,
 - (a) must notify the director according to the requirements of Subsection 19-6-407(2)(a)(i);
 - (b) is subject to delivery prohibition requirements in Section R311-206-8;
 - (c) is subject to closure requirements under Subsections 19-6-407(2)(a)(iii) and (iv) and Section R311-204-2;
 - (d) must demonstrate the tank has been emptied of any regulated substance to the lowest discharge point on the tank;
 - (e) is subject to release reporting requirements as outlined in Subsection 19-6-407(2)(a)(iv); and
 - ~~(f) must notify local emergency responders of a spill or overfill exceeding 25 gallons within 24 hours.~~
- (7) The owner or operator of an APST that is not in service before May 5, 2021, is not subject to the requirements of Subsection 19-6-407(2)(c) and Section 19-6-412 unless the owner or operator elects to bring the APST back in service.
- (8) The owner or operator of an APST must notify within 24 hours local emergency responders of a spill or overfill exceeding 25 gallons.

R311-203-3. New Installations, Permits.

- (1) Certified UST installers must notify the director at least ten business days, or another time period approved by the director, before commencing any of the following activities:
 - (a) the installation of a full UST system or tank only;
 - (b) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
 - (c) the internal lining of a previously-existing tank;
 - (d) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
 - (e) the installation of a bladder in a tank;
 - (f) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
 - (g) the installation of a spill prevention or overfill prevention device;
 - (h) the installation of a leak detection monitoring system; or
 - (i) the installation of a containment sump or under-dispenser containment.
- (2) The UST installation company must submit to the director an UST installation permit fee of \$200 when any of the activities listed in Subsections R311-203-3(1)(a) through R311-203-3(1)(f) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.
- (3) The fees assessed under Subsection 19-6-411(2)(a)(i) will be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date.
 - (a) installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3(3) is charged shall count toward the total installations for the 12-month period.

- (4) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(4), an installation is considered complete when:
- (a) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance;

or

(b) in the case of installation of the components listed in Subsections R311-203-3(1)(d) through R311-203-3(1)(f), the new installation is functional and the UST holds a regulated substance and is operational.

(5) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the director of the change.

(a) when additions are made, the UST installation permit fee shall be increased based on the additional number of tanks to be installed in accordance with Subsection 19-6-411(2)(a)(i) and the Department of Environmental Quality Fee Schedule, as approved annually by the Legislature.

(6) The number of UST installation companies performing work on a particular installation will not be a factor in determining the UST installation permit fee for that installation.

(a) each installation company must be identified on the UST installation permit.

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

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

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

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

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

(4) The director shall issue a certificate of registration to owners or operators for individual PSTs at a facility if:

(a) the tanks are in use or are temporarily closed as outlined in 40 CFR Part 280 Subpart G; and

(b) the PST registration fee has been paid.

(5) Pursuant to Subsection 19-6-408(5)(c), past due PST registration fees, late payment penalties and interest must be paid before the director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility.

(a) the director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the PSTs within one year of becoming the new owner or operator of the facility.

(6) A UST will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of compliance with the EPA Technical Compliance Rate during an inspection, and remains out of compliance for six months or greater following the initial inspection.

(a) the higher registration fee is due July 1 following the documented six-month period of non-compliance.

(7) When the director is notified of the existence of a previously unregistered regulated PST, the director shall assess the applicable notification fee and PST registration fee for the current fiscal year.

(a) if the PST is properly permanently closed within 90 days of the notification of the existence of the PST, the director may decline active collection of pastdue registration fees, late payment penalties, and interest for previous fiscal years.

R311-203-5. PST Testing Requirements.

(1) Tank tightness testing. The testing method must be able to test the PST system at the maximum level that could contain regulated substances.

(a) tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

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

(a) the form "Utah Spill Prevention Test"; or

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

(c) another form approved by the director.

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

(a) the form "Utah Containment Sump Test"; or

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

(c) another form approved by the director.

(4) When a sump sensor is used as an automatic line leak detector, the secondary containment sump must be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the director.

(a) the sensor shall be located as close as is practicable to the lowest portion of the sump.

(5) Cathodic protection testing. Cathodic protection tests must meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the director. The tester who performs the test must provide the following information:

(a) location of at least three test points per tank;

(b) location of one remote test point for galvanic systems;

(c) test results in volts or millivolts;

(d) pass or fail determination for each tank, line, flex connector, or other UST system component tested;

(e) the criteria by which the pass or fail determination is made;

(f) a site plat showing locations of test points; and

(g) a re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

- (6) UST testers performing tank and line tightness testing must include the following as part of the test report:
 - (a) pass or fail determination for each tank or line tested;
 - (b) measured leak rate;
 - (c) test duration;
 - (d) product level for tank tests;
 - (e) pressure used for pressure tests;
 - (f) type of test; and
 - (g) test equipment used.
- (7) overfill prevention equipment inspection. An individual who conducts an inspection of overfill prevention equipment to meet the requirements of 40 CFR 280.35(a)(2) must report the results using:
 - (a) the form "Appendix C-5 UST Overfill Equipment Inspection Automatic Shutoff Device and Ball Float Valve," found in PEI RP1200, when the overfill prevention is provided by either an automatic shutoff device or a ball float valve;
 - (b) the form "Appendix C-6 Overfill Alarm Operation Inspection," found in PEI RP1200, when overfill prevention is provided by an overfill alarm; or
 - (c) another form approved by the director.
- (8) Automatic tank gauge inspection. An individual who conducts an inspection of automatic tank gauges to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:
 - (a) the form "Appendix C-7 Automatic Tank Gauge Operation Inspection," found in PEI RP1200, and if the PST system or any portion thereof is interstitially monitored, "Appendix C-8: Liquid Sensor Functionality Testing," found in PEI RP1200; or
 - (b) another form approved by the director.
- (9) Automatic line leak detector testing. An individual who conducts a test of automatic line leak detectors to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:
 - (a) the form "Appendix C-9 Mechanical and Electronic Line Leak Detector Performance Tests," found in PEI RP1200; or
 - (b) another form approved by the director.
- (10) Leak Detection and Testing Requirements for APSTs~~[-using the EAP for financial responsibility]:~~
 - (a) line tightness testing or monthly monitoring is required for underground piping associated with APSTs.
 - (i) an individual who conducts a tightness test of product lines must perform the test as set forth in 40 CFR 280.44(b).
 - (ii) when pressurized underground product piping is connected to an APST that is not double-walled, sensor equipped, and monitored monthly, the product piping must be tested for tightness annually. The test must meet the requirements of Subsection R311-203-5(6).
 - (b) spill prevention equipment associated with an APST must meet the standards set forth in International Fire Code (IFC) 2306.6.2.6 referenced in the Utah State Fire Code adopted pursuant to Section 15A-5-103~~[and be double walled and monitored monthly; or have an integrity test performed every three years. The test must meet the requirements of Subsection R311-203-5(2)].~~
 - (c) beginning July 1, 2026, an APST resting on the ground must perform monthly interstitial monitoring, a monthly 0.2 gallon per hour release detection test, or a tank tightness test every 5 years. The test must meet the requirements of Subsection R311-203-5(1).
 - (d) beginning July 1, 2026, if applicable, APSTs and associated piping are required to have cathodic protection that meets the standards set forth in IFC 5704.2.7.9 and National Fire Protection Agency (NFPA) 30.23.3.5 and must have a passing cathodic protection test every 3 years. The test must meet the requirements of Subsection R311-203-5(5).
 - (e) beginning July 1, 2026, an APST shall have an overfill prevention device that meets the standards set forth in IFC 2306.6.2.3, 5704.2.7.5.8 and 5704.2.927.5 and must have an overfill prevention equipment inspection performed every three years. The overfill prevention equipment inspection must meet the requirements of Subsection R311-203-5(7).
 - (f) beginning July 1, 2026, an APST with pressurized underground product piping shall have an automatic line leak detector that meets the standards set forth in IFC 2306.7.7.1 and must have an automatic line leak detector test performed annually. The test must meet the requirements of Subsection R311-203-5(9).

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

- (1) Secondary containment for tanks and piping.
 - (a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, tanks and product piping that are installed as part of an UST system after October 1, 2008 and before January 1, 2017 must have secondary containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.
 - (b) the secondary containment installed under Subsection R311-203-6(1) must meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping.
 - (i) monthly monitoring must meet the requirements of 40 CFR 280.43(g).
 - (c) containment sumps for piping installed under Subsection R311-203-6(1) are required:
 - (i) at the submersible pump or other location where the piping connects to the tank;
 - (ii) where the piping connects to a dispenser, or otherwise goes aboveground; and
 - (iii) where double-walled piping that is required under Subsection R311-203-6(1) connects with existing piping.
 - (d) containment sumps for piping that is installed under Subsection R311-203-6(1) must:
 - (i) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and
 - (ii) meet the requirements of Subsection R311-203-6(2)(b).
 - (e) in the case of a replacement of tank or piping, only the portion of the UST system being replaced is subject to the requirements of Subsection R311-203-6(1).
 - (i) if less than 100% of the piping from a tank to a dispenser is replaced, the requirements of Subsection R311-203-6(1) applies to new product piping that is installed.
 - (ii) the closure requirements of Rule R311-205 apply to product piping that is taken out of service.
 - (iii) when new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping must be secondarily contained, and monitored for releases according to 40 CFR 280.43(g).
 - (f) the requirements of Subsection R311-203-6(1) do not apply to:
 - (i) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2); or

- (ii) piping that connects two or more tanks to create a siphon system.
- (g) the requirements of Subsection R311-203-6(1) apply to emergency generator USTs installed after October 1, 2008.
- (2) Under-dispenser containment.
 - (a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an UST, must have under-dispenser containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.
 - (b) the under-dispenser containment must:
 - (i) be liquid-tight on its sides, bottom, and at penetrations;
 - (ii) be compatible with the substance conveyed by the piping; and
 - (iii) allow for visual inspection and access to the components in the containment system, or be continuously monitored for the presence of liquids.
 - (c) if an existing dispenser is replaced, the requirements of Subsection R311-203-6(2) apply to the new dispenser if any equipment used to connect the dispenser to the PST system is replaced.
 - (i) this equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.
 - (3) The requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply if the installation is located more than 1,000 feet from an existing community water system or an existing potable drinking water well.
 - (a) the PST owner or operator must provide to the director documentation to show that the requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply to the installation.
 - (b) the documentation shall be provided at least 60 days before the beginning of the installation, and shall include:
 - (i) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1,000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility; and
 - (ii) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections R311-203-6(1) and R311-203-6(2).
 - (4) To determine whether the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new UST, piping, or motor fuel dispenser system to:
 - (a) the closest part of the nearest community water system, including:
 - (i) the location of the wellheads for groundwater and the location of the intake points for surface water;
 - (ii) water lines, processing tanks, and water storage tanks; and
 - (iii) water distribution/ and service lines under the control of the community water system operator, or
 - (b) the wellhead of the nearest existing potable drinking water well.
 - (5) If a new UST facility is installed, and is not within 1,000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply if the owner or operator installs a potable drinking water well at the facility that is within 1,000 feet of the UST, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.
 - (6) To meet the requirements of 40 CFR 280.20, tanks and product piping that are installed or replaced as part of an UST system on or after January 1, 2017 must be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

R311-203-7. Operator Inspections.

- (1) Owners and operators must perform periodic inspections in accordance with 40 CFR 280.36.
 - (a) inspections must be conducted by or under the direction of the designated Class B operator.
 - (b) the Class B operator must ensure that documentation of each inspection is kept and made available for review by the director.
- (2) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or 208.36(a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the director.
- (3) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and Section R311-204-4 must have an annual operator inspection.
- (4) An owner or operator who conducts visual checks of tank top containment sumps and under-dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR 280.43(g) must conduct the visual checks monthly and report the results on the operator inspection form.

R311-203-8. Unattended Facilities.

- (1) An UST facility that:
 - (a) normally has no employee on site or is open to dispense fuel at times when no employee or trained operator is on site must have:
 - (i) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders; and
 - (ii) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

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

Date of Last Change: 2024[September 27, 2022]

Notice of Continuation: March 8, 2022

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

State of Utah
Administrative Rule Analysis
Revised May 2023

NONSUBSTANTIVE CHANGE		
Title No. - Rule No. - Section No.		
Rule or Section Number:	R311-204	Filing ID: Office Use Only

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room number:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Uta 84116	
Mailing address:	P.O. Box 144849	
City, state and zip:	Salt Lake City, Utah 84114-4840	
Contact persons:		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Morgan Atkinson	801-979-2512	mpatkinson@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
Petroleum Storage Tanks: Closure and Remediation.
3. Reason for the change:
The reason for this rule change was to suggest an additional standard for inspecting APSTs since the referenced standard (API 653) applies to larger APSTs. The intent of this rule was always meant to apply to all APSTs.
4. Summary of the change:
R311-204-3(3) added STI SP001 inspection criteria for smaller APSTs where API 653 does not apply.

Agency Authorization Information

To the agency: The Office of Administrative Rules is responsible for setting the effective date of nonsubstantive changes (see Section R15-4-6). The agency does NOT file a notice of effective date.			
Agency head or designee and title:	Brent Everett, Director	Date:	05/09/2024

R311. Environmental Quality, Environmental Response and Remediation.

R311-204. Petroleum Storage Tanks: Closure and Remediation.

R311-204-1. Definitions.

Definitions are found in Rule R311-200.

R311-204-2. Petroleum Storage Tank Closure Plan.

(1) Owners or operators of PSTs or any portion thereof which are to be permanently closed or undergo change-in-service must submit a permanent closure plan to the director.

(a) the permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with Subsection 19-6-407(2)(a)(iii) for APSTs and 40 CFR 280 Subpart G for USTs.

(2) If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is not required to submit a closure plan, but must meet the requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(3) The closure plan shall address applicable issues involved with permanent closure, change-in-service, or reuse of APSTs, including:

- (a) product removal;
- (b) sludge disposal;
- (c) vapor purging or inerting;

- (d) removing or securing and capping product piping;
- (e) removing vent lines or securing vent lines open;
- (f) tank cleaning;
- (g) environmental sampling;
- (h) contaminated soil and water management;
- (i) in-place tank disposal or tank removal;
- (j) transportation of tank;
- (k) permanent disposal; and
- (l) other disposal activities which may affect human health, human safety, or the environment.

(4) No PST shall be permanently closed or undergo change-in-service before the owner or operator receiving final approval of the submitted permanent tank closure plan by the director, except as outlined in Subsection R311-204-2(2).

(a) closure plan approval is effective for a period of one year.

(b) if the PST has not been permanently closed or undergone change-in-service as proposed within one year following approval from the director, the plan must be re-submitted for approval, unless otherwise approved by the director.

(5) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the director.

(6) The owner or operator shall ensure that the approved permanent closure plan and approval letter are on site during closure activities.

(7) Any deviation from or modification to an approved closure plan must be approved by the director before implementation, and must be submitted in writing to the director.

(8) The director must be notified at least three business days before the start of closure activities.

R311-204-3. Disposal.

(1) Tank labeling. Immediately after being removed, tanks which are permanently closed by removal must be labeled with the following in letters at least two inches high:

- (a) the facility identification number;
- (b) the substance contained; and
- (c) the date removed: "month/day/year."

(2) Removed tanks shall be expeditiously disposed of as regulated PSTs by the following methods:

- (a) the tank may be cut up after the interior atmosphere is first purged or inerted.
- (b) the tank may be crushed after the interior atmosphere is first purged or inerted.
- (c) the tank may not be used to store food or liquid intended for human or animal consumption.
- (d) the tank may be disposed of in a manner approved by the director.

(3) Any removed APST that is to be reused as an APST must be recertified by the manufacturer of the tank or undergo a tank inspection, conducted by a qualified contractor, using a nationally recognized standard such as STI SP001 or API 653.

(4) Tank transportation. Used tanks which are transported on roads of the state must be cleaned inside the tank before transportation, and be free of product, free of vapors, or made inert during transport.

R311-204-4. Closure Notice.

(1) Owners or operators of USTs which were permanently closed or had a change-in-service before December 22, 1988 must submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(2) Owners or operators of USTs which are permanently closed after December 22, 1988, and APSTs closed or having a change-in-service as defined in 40 CFR 280 Subpart G after May 5, 2021 must submit a completed closure notice form and the following information within 90 days after tank closure:

(a) results from the closure site assessment conducted in accordance with Rule R311-205, including analytical laboratory results and chain of custody forms; and

(b) a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include:

- (i) scale;
- (ii) north arrow;
- (iii) streets;
- (iv) property boundaries;
- (v) building structures;
- (vi) utilities;
- (vii) PST system location;
- (viii) location of any contamination observed or suspected during sampling;
- (ix) location and volume of any stockpiled soil;
- (x) the extent of the excavation zone; and
- (xi) any other relevant features.

(c) sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(3) Owners and operators of PSTs that are temporarily closed for a period greater than three months must submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(4) Closure notices for permanent and temporary closure shall be submitted on the current approved forms.

R311-204-5. Remediation.

(1) Any PST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a certified PST consultant, except as outlined in Subsections 19-6-402(6)(b), R311-201-2(1), and R311-204-5(2).

(2) At the time of PST closure, a certified UST remover may over-excavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the director, in addition to the minimum amount required for closure of the PST.

(a) this over-excavation may be performed without the supervision of a certified PST consultant.

(b) appropriate confirmation samples must be taken by a certified sampler in accordance with Rule R311-201 to determine the extent and degree of contamination.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Last Change: ~~2024~~[~~July 15, 2022~~]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-402; 19-6-403

State of Utah
Administrative Rule Analysis
Revised May 2023

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

RR311-206

Filing ID: Office Use Only

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Room number:		
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state and zip:	Salt Lake City, Utah 84116	
Mailing address:	P.O. Box 144840	
City, state and zip:	Salt Lake City, Utah 84114-4840	
Contact persons:		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Morgan Atkinson	801-979-2512	mpatkinson@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms

3. Purpose of the new rule or reason for the change:

The purpose of this rule change is to allow the agency to require leak detection at all regulated facilities, as well as clarifying the instances when the agency is allowed to place a delivery prohibition tag on a tank. Adding leak detection requirements for Aboveground Petroleum Storage Tanks (APSTs) brings parity with the existing requirements for Underground Storage Tanks (USTs) and APSTs participating in the Environmental Assurance Program (EAP). The previous wording of the delivery prohibition section of the rule did not allow for delivery prohibition in certain circumstances which tank manufacturers and other states' storage tank programs recommend delivery prohibition. The new wording fixes this issue.

4. Summary of the new rule or change:

R311-206-3(1)(b)(i): Expands the leak detection requirement to all APST facilities and not only those on the Environmental Assurance Program (EAP). R311-206-4(6): Delete the subpart that lists the leak detection requirements for APSTs on the EAP because they can already be found in R311-203-5(10). Add a subpart R311-206-8(4) authorizing the placement of a delivery prohibition tag on PSTs that fail a PST Test or show physical evidence of a release of product. Simplify the confusing wording of R311-206-8(3).

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

R311-206-3(1)(b)(i) and R311-206-4(6): This rule change is not expected to have any fiscal impacts on state revenues or expenditures because all state PST facilities are required by statute to participate in the Environmental Assurance Program (EAP).

R311-206-8(4): The cost to state budget is inestimable because the likelihood or frequency of a release from PSTs is unknown.

Other changes will have no anticipated cost or savings to the state budget because they just fix minor errors and clarify certain rules.

B) Local governments:

R311-206-3(1)(b)(i) and R311-206-4(6): This rule change is expected to have an inestimable fiscal cost to local government owned facilities with APSTs that do not participate in the EAP. Insurance companies who provide financial Assurance (FA) will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in rule.

R311-206-8(4): The cost to local governments is inestimable because the likelihood or frequency of a release from PSTs is unknown.

Other changes will have no anticipated cost or savings to local governments because they just fix minor errors and clarify certain rules.

C) Small businesses ("small business" means a business employing 1-49 persons):

R311-206-3(1)(b)(i) and R311-206-4(6): This rule change is expected to have an inestimable fiscal cost to small businesses owned facilities with APSTs that do not participate in the EAP. Insurance companies who provide financial Assurance (FA) will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in rule.

R311-206-8(4): The cost to small businesses budget is inestimable because the likelihood or frequency of a release from PSTs is unknown

Other changes will have no anticipated cost or savings to small business because they just fix minor errors and clarify certain rules.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

R311-206-3(1)(b)(i) and R311-206-4(6): This rule change is expected to have an inestimable fiscal cost to non-small businesses owned facilities with APSTs that do not participate in the EAP. Insurance companies who provide financial Assurance (FA) will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in rule.

R311-206-8(4): The cost to non-small businesses is inestimable because the likelihood or frequency of a release from PSTs is unknown

Other changes will have no anticipated cost or savings to non-small businesses because they just fix minor errors and clarify certain rules.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

These rule changes are not expected to have any fiscal impacts on other persons because the rule changes will not apply to these entities.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

Any costs to affected persons that choose to not participate in the EAP is inestimable. Insurance companies providing FA will likely require these facilities to meet certain leak detection standards that are similar or stricter than those set forth in rule. The cost to affected person for delivery prohibition to a PST is inestimable because the likelihood or frequency of a release from PSTs is unknown.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
 The Executive Director of Department of Environmental Quality, Kim Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

19-6-105	19-6-403	19-6-410.5
19-6-428		

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) 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 the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) 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 the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

Public Notice Information

8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 07/01/2024

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

Date (mm/dd/yyyy):	Time (hh:mm AM/PM):	Place (physical address or URL):
06/10/2024	2:00 PM	Multi Agency State Office Building 195 N. 1950 W. Salt Lake City, Utah 84116 Room 1015

To the agency: If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

9. This rule change MAY become effective on: 07/12/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. 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 head or designee and title:	Brent Everett, Director	Date:	05/08/2024
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R311. Environmental Quality, Environmental Response and Remediation.

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

R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(1) To demonstrate financial assurance, as required by Section 19-6-412 and Subsection 19-6-407(2)(c), owners or operators of petroleum storage tanks must:

(a) declare they will participate in the EAP and meet the requirements for participation in the EAP under Sections 19-6-410.5, 19-6-428 and R311-206-4; or

(b) demonstrate financial assurance that meets the coverage amounts specified in 40 CFR 280.93, by an allowable method specified in Section R311-206-5.

(2) For the purposes of Subsection 19-6-412(6), tanks at a facility must be covered by the same financial assurance mechanism, and must be considered to be in one area, unless the director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(1) The director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator must certify that the PST is in substantial compliance with state and federal statutes, rules, and regulations applicable to PST systems;

~~[(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).]~~

(c) the tank tightness test, as required by Section 19-6-413 conducted within six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual PST is not leaking;

(d) the owner or operator has submitted a letter to the director stating that based on customary business inventory practices standards there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and participates in the EAP or demonstrates that the financial assurance that will be used meets the requirements of Subsection R311-206-2(1)(b) and Section R311-206-5;

(f) the owner or operator has met the requirements for the financial assurance mechanism chosen, including payment of applicable fees;

(g) the owner or operator has submitted an as-built drawing, for newly-installed systems, that meets the requirements of Subsection R311-200-1(2)(d) or a site plat, for existing systems, that meets the requirements of Subsection R311-200-1(2)(ccc); and

(h) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

R311-206-4. Requirements for Environmental Assurance Program Participants.

(1) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the director as a specific number of gallons, based on the throughput for the previous calendar year.

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the director, any petroleum storage tank fee for that tank for the current fiscal year is due when the tank is brought into use, as a requirement for receiving a certificate of compliance.

(3) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(4) Auditing of PST facility throughput records.

(a) owners and operators must retain for seven years the monthly tank throughput records of the facility.

(b) tank throughput records shall include financial and product documentation for receipts, deliveries, transfers, and inventories.

(c) the director may audit or commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) records must be made available at the department for inspection within 30 calendar days after receiving notice from the director.

(ii) audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(iii) auditing tank throughput may be accomplished by any method approved by the director.

(iv) costs of an independent audit shall be paid by the owner or operator.

(5) Owners or operators eligible for participation in the EAP must demonstrate financial assurance for the difference between coverage provided by the EAP and coverage amounts required by 40 CFR 280 Subpart H.

(a) if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the director.

(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.

(A) the owner or operator will bear the expense for the audit.

(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).

(b) an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

(c) the processing fee requirement referenced in Subsection R311-206-5(2) is not applicable because the administrative cost is covered by the EAP fee.

~~[(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:~~

- ~~(a) before July 1, 2026, the owner or operator:~~
 - ~~(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and~~
 - ~~(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.~~
- ~~(b) on or after July 1, 2026, the owner or operator:~~
 - ~~(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;~~
 - ~~(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);~~
 - ~~(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and~~
 - ~~(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.]~~

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(1) Owners and operators who elect to utilize an alternate form of financial assurance must meet the minimum coverage amounts using one or a combination of mechanisms as outlined in 40 CFR 280.94.

(a) owners and operators must submit to the director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(b) formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(c) if the financial assurance documentation submitted to the director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) processing fees for subsequent reviews of financial assurance documents are due on July 1 of the fiscal year for which the review is required.

(b) pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.

(ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).

(c) if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the director, and an additional processing fee shall be paid in circumstances as determined by the director.

(3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:

(a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.

(b) owners and operators using insurance and risk retention group coverage for financial assurance must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) if the insurance policy or risk retention group coverage is canceled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 280.97(b)(2)2.d. to the director as well as the insured.

(ii) the insurer must have a rating of A- or greater by A.M. Best Co.

(c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.

(d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.

(e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(g) guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from the chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.

(4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) information requested must be reported to the director within 30 calendar days after receiving the request.

(b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.

(d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.

(i) audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(ii) auditing of financial assurance methods may be accomplished by any method approved by the director.

(5) Any costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the director is the sole responsibility of the owner or operator.

(6) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the director.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Petroleum Storage Tanks and Eligible Exempt Aboveground Storage Tanks Containing Petroleum to the Environmental Assurance Program.

(1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the EAP by:

- (a) performing a site check in accordance with Rule R311-205;
- (b) meeting the requirements of Subsections 19-6-428(3)(a), 19-6-415(1) and R311-206-3(1);
- (c) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and
- (d) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(2) Owners or operators of eligible exempt aboveground storage tanks containing petroleum may voluntarily participate in the EAP by

- (a) performing a site check in accordance with Rule R311-205; and
- (b) meeting the requirements of Subsections 19-6-415(2) and 19-6-428(3)(a), and Sections R311-206-3 and R311-206-4.

R311-206-7. Revocation and Lapsing of Certificates.

(1) The director shall revoke a certificate of compliance or registration if the director determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(2) A PST owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(1) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.

(3) A PST owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Sections 19-6-412 and R311-206-3.

(4) A PST owner or operator who has had eligibility to receive payments for claims against the fund lapse under Subsection 19-6-411(3)(c)(ii) must:

- (a) meet the requirements of Subsection 19-6-428(3); and
- (b) pay fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Petroleum Storage Tank Fund, the eligibility to make a claim against the Petroleum Storage Tank Fund will terminate as specified in Section R311-207-2.

(a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with the following requirements as outlined in 40 CFR 280:

- (a) release reporting;
- (b) abatement;
- (c) investigation;
- (d) corrective action; or
- (e) other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(1) In accordance with Subsections 19-6-411(7) and 19-6-407(2)(d)(ii), the director shall authorize the placement of a delivery prohibition tag identifying a tank:

- (a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414;
- (b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5);
- (c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(1)(d); or
- (d) that is a new installation, and has not been issued a certificate of compliance.

(2) For USTs, in accordance with Subsection 19-6-403(1)(b)(i), the director shall authorize the placement of a delivery prohibition tag to be placed on the UST as soon as practicable after the determination is made that a tank does not have:

- (a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (b) overfill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or
- (d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) For APSTs, out of service after May 5, 2021, the director shall authorize the placement of a delivery prohibition tag ~~[to be placed on the APST]~~ as soon as practicable ~~[after the determination that the APST was not in service after May 5, 2021]~~.

(4) For PSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the PST as soon as practicable after the determination that a release from a PST is ongoing. The determination may be made by:

- (a) failed tests as defined by "PST Testing" in R311-200-1(ss); or
- (b) visual presence, odors, inventory loss, or otherwise apparent contamination of environmental media.

~~(4)5~~ The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

~~(5)6~~ A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(~~5~~8).

~~(6)7~~ The director may issue written approval for a delivery of petroleum to:

- (a) provide ballast for a new tank during installation, or
- (b) allow for the tank tightness test required under Section 19-6-413.

~~(7)8~~ The delivery prohibition tag must remain in place until the director issues:

- (a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):
 - (i) a new certificate of compliance for the tank; and
 - (ii) written authorization to remove the delivery prohibition tag; or
- (b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):

(i) written authorization to remove the delivery prohibition tag.

(18) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(18)(a)(ii) or R311-206-8(18)(b)(i), the PST owner or operator is subject to:

- (a) a re-inspection and any applicable fees; and
- (b) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(1) Owners and operators of PSTs who have voluntarily elected to participate in the EAP may cease participation in the EAP and be exempted from the requirements described in Section R311-206-4 by:

- (a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205; or
- (b) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5; and

(ii) notifying the director in writing at least 30 days before the date of cessation of participation in the EAP, and specifying the date of cessation.

(A) the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other petroleum storage tanks owned or operated by the owner or operator.

(B) the date of cessation of participation in the EAP may occur after the date designated in Subsection R311-206-9(1)(b)(ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) prorata refunds will not be given.

(3) For tanks being removed voluntarily from the EAP, the date of cessation of participation in the EAP shall be the date on which coverage under the EAP ends.

(a) subsequent claims for payments from the Petroleum Storage Tank Fund must be made in accordance with Sections 19-6-424 and R311-207-2.

(4) For any facility that participates in the EAP and is sold to a company with facilities that do not participate in the EAP, the date of termination of coverage is the closing date for the real estate transaction.

(a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Non-participation.

(1) Owners and operators not participating in the EAP must, before any subsequent participation in the EAP, meet the following requirements:

(a) notify the director of the intent to participate in the EAP;

(b) comply with the requirements of Subsection 19-6-428(3); and

(c) meet the requirements of Section R311-206-3 to qualify for a new certificate of compliance.

R311-206-11. Environmental Assurance Fee Rebate.

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the EAP, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation," which is incorporated by reference.

(a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the EAP shall be:

(a) calculated on a facility basis;

(b) valid for the calendar year;

(c) based on the facility characteristics as of December 15 of the prior calendar year; and

(d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.

(3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(a) meet the requirements for secondary containment in 40 CFR 280.20; and

(b) meet one of the following:

(i) use an interstitial sensor and documentation of monthly interstitial monitoring; or

(ii) documentation of monthly visual checks of a brine-filled interstitial space.

(4) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and

(b) meet one of the following:

(i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps, and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls.

(6) Each facility that participates in the EAP may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table," dated June 2, 2014, which is incorporated by reference.

(7) A facility that begins participation in the EAP after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the EAP.

(8) The Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026 as per Subsections 19-6-410.5(5)(d) and 19-6-410.5(5)(e).

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