State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

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

A regular meeting of the Waste Management and Radiation Control Board has been scheduled for March 10, 2016 at 1:30 p.m., at the Utah Department of Environmental Quality, Multi-Agency State Office Building, Conference Room #1015, 195 North 1950 West, SLC.
(One or more Board members may participate telephonically.)

AGENDA

I. Call to Order.

II. Approval of the Meeting Minutes for the January 14, 2016 Board Meeting (**Board Action Item**).

III. Underground Storage Tanks Update.

IV. Administrative Rules.

- A. Approve for filing of five-year review of Radiation Control Rule R313-26 (**Board Action Item**).
- B. Approve for filing of five-year review of Hazardous Waste Rules R315-15, R315-17, R315-101, R315-102 (**Board Action Item**).
- C. Final adoption of R313-15, R313-19, and R313-24 to incorporate changes to the federal decommissioning planning regulations promulgated by the Nuclear Regulatory Commission on June 17, 2011 (76 FR 35512) (**Board Action Item**).
- D. Approval of a change in a proposed rule to R313-22-35 to incorporate comments made by the Nuclear Regulatory Commission (**Board Action Item**).
- E. Approval to proceed with formal rulemaking and 30-day public comment period for proposed changes to Solid Waste Rule R315-310 and to adopt Solid Waste Rule R315-319 (**Board Action Item**).

V. Low Level Radioactive Waste Section.

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

(Over)

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

VI. Legislative Update.

VII. Other Business.
- A. Misc. Information Items.
- B. Scheduling of next Board meeting.

VIII. Adjourn.

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

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
January 14, 2016
1:30 p.m.

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

Staff Members Present: Brent Everett, Allan Moore, Ralph Bohn, Ed Costomiris, Arlene Lovato, Rick Page, Jerry Rogers, Elisa Smith and Raymond Wixom

Others Present: Les Ashwood, Lonnie Brown

I. Call to Order.

Dwayne Woolley (Chair) welcomed all in attendance and called the meeting to order at 1:33 p.m. Scott Anderson was excused from the meeting (Allan Moore acted in his behalf).

II. Approval of the meeting minutes for the December 10, 2015 Board meeting.

It was moved by Steve McIff and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the December 10, 2015 Board Meeting minutes.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation (DERR), informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of November 2015 was $16,697,672.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of December 2015 is $16,406,467.00. The PST Trust Fund is managed on a cash balance basis to ensure sufficient coverage for known claims that have been reported. There were no questions or comments on the PST Trust Fund balance.

Mr. Everett reported statistics from the Underground Storage Tank (UST) Program for the 2015 calendar year. During 2015, there were 86 new leaking underground storage tank (LUST) sites reported to the DERR. These sites are now being tracked and managed by the DERR. There were 121 previous LUST sites cleaned up sufficiently to be closed out. There were also 967 compliance inspections conducted. Of the facilities inspected, 86% were in compliance at the time of inspection. Within a 60-day follow-up period, there was a 94% overall compliance rate. The DERR target for follow-up compliance is 90%.

At the last board meeting, Vice Chairman Dennis Riding asked if facility owners are taking advantage of the new rebate program that was instituted as part of House Bill (HB) 138 in 2014. Mr. Everett reported as part of HB 138, the surcharge on petroleum increased from one half cent per gallon to a total of .65 of a cent per gallon beginning January 2015. A surcharge rebate is then available to facilities based on a DERR risk assessment. The legislation also changed the structure of the PST Trust Fund fee that is charged to facilities participating in the PST Trust Fund. In 2015, revenue from the PST Trust Fund tank fee increased to $750,000.00 from an average of $350,000.00 over the previous five years. The surcharge revenue for 2015 increased to 5.79 million dollars from an average of 4.72 million dollars over the previous five years. The total amount of rebates claimed for the 2015 calendar

year, to date is $97,651.00. Facilities have up to three years to apply for rebates, though, so it is anticipated that this number will increase. The potential rebate amount for 2015 is estimated at $665,000.00. The initial calculations from HB 138 showed an estimated net increase of approximately $350,000.00 to $700,000.00 per year to the PST Trust Fund. These calculations appear to be on target for 2015. There were no questions or comments regarding the rebate program or changes to the PST Trust Fund from HB 138**.**

IV. Hazardous Waste Rules.

A. Approval to proceed with formal rulemaking and 30-day public comment period for proposed Hazardous Waste Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315-263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273 (Board Action Item).

Ralph Bohn, Planning and Technical Support Manager, reviewed the proposed changes to R315-103, 124, 260, 261, 262, 263, 264, 265, 266, 268, 270, and 273 for publication in the Utah Bulletin and commencement of a 30-day public comment period. Ralph Bohn provided a power-point presentation (a copy is available with the meeting minutes).

The Utah Hazardous Waste Rules were first adopted in 1984. These rules have been periodically changed to stay current with federal rules and to maintain an EPA-approved hazardous waste program. Adoption by reference was used for some of the changes and others changes were made using EPA or state equivalent language.

As a consequence of the use of adoption by reference, the hazardous waste rules, as they currently exist, require the reader to have the Utah Rules and 20 different years of the Code of Federal Regulations (CFRs), and in some years, two different volumes for a total of 26 different CFRs, dating from 1990 through 2011. In addition, the current hazardous waste rules have adopted by reference several different rules using a federal register reference, requiring the reader to have access to Federal Registers from 1986 to 1998.

The proposed rules will follow the federal numbering system which will make it easier for readers and will make it easier to make changes when federal rules change. The proposed rules also incorporate all the changes to the federal rules that have been made up to the current date. These changes are required to meet both the federal requirement that the Utah rules be at least as stringent as the federal rules and the Utah requirement that the rules be no more stringent than the federal rules.

The proposed changes include adding two new wastes to the Universal Waste Rules.

Dennis Riding asked if the addition of the two wastes to the Universal Waste Rules (antifreeze standards and the aerosol can standard) is consistent with EPA requirements. Ralph Bohn stated that EPA has standards on a list that include items such as lead acid batteries, fluorescent lights, mercury switches and states can also include other items to the list such as antifreeze and aerosol cans. Approximately 15 to 20 other states have included antifreeze to their lists. Mr. Riding asked if by adding these items to the universal waste stream makes Utah more restrictive than what EPA requires. Mr. Bohn explained that it does not make Utah more stringent than the EPA to include these two items to the Universal Waste Rules.

It was moved by Shawn Milne and seconded by Brett Mickelson and UNANIMOUSLY CARRIED to approve for formal rulemaking and a 30-day public comment period the proposed changes to Hazardous Waste Rules R315-103, R315-124, R315-260, R315-261, R315-262, R315 263, R315-264, R315-265, R315-266, R315-268, R315-270, and R315-273.

B. Approval to proceed with formal rulemaking and 30-day public comment period for repeal of Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50 (Board Action Item).

Ralph Bohn, Planning and Technical Support Manager, reviewed the proposed repeal of Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50.

These rules need to be repealed because, as previously explained in a separate action, the Board is being asked to approve, for publication in the Utah Bulletin, new hazardous waste rules. Accordingly, the current hazardous waste rules identified above must be repealed. The proposal to repeal the current rules needs public notice and an opportunity for comment.

If the new hazardous waste rules to replace the current rules are approved and made effective, the repeal of the current rules will also be made effective at the same time. The repeal of the current rules will not take place until the new rules are in affect. The changes to the rules consist only of renumbering and reformatting. This change is designed to help the reader by putting all of the rules in one place and by following the EPA numbering system, eliminating the need to reference several different documents.

It was moved by Shawn Milne and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve for formal rulemaking and a 30-day public comment period repeal of Hazardous Waste Rules R315-1, R315-2, R315-3, R315-4, R315-5, R315-6, R315-7, R315-8, R315-9, R315-12, R315-13, R315-14, R315-16, and R315-50.

V. Presentation on X-Ray Program.

Lisa Mechem, Environmental Scientist, Planning and Technical Support Section, provided a power-point presentation on the X-Ray Program that included detection equipment, data collection, x-ray machines, postings, R313-28-140 Qualifications of Mammography Imaging Medical Physicist, and certificates including qualified experts (a copy is available with the meeting minutes).

Dwayne Woolley asked about the process the Division uses to know what machines are in use. Ms. Mechem explained that the State of Utah requires manufacturers to notify the Division when they sell their equipment to companies. For medical equipment/instruments, a Federal Form 2579 is required to be submitted to the Division. The State of Utah rules also require the same standards for the sale of industrial equipment. Mr. Woolley asked about procedures regarding transfer of equipment between states. Ms. Mechem stated that scenario does not happen that often. However, reciprocity rules are in place that require notification to the Division Director when equipment will be brought into the State for less than 30 days. If it is going to be in the State for more than 30 days, companies are required to register their equipment, even if their main offices are located out of state.

Dennis Riding asked about the frequency of inspections and compliance rates. Ms. Mechem stated the inspection timeframes vary from one to five years, depending on the type and out-put of the machine. The low output industrial machines (dental/veterinary/podiatrist offices) are required to be inspected

every five years and industrial equipment (CT Scans/fluoroscope/industrial type of equipment) inspections vary from one to five years depending on the type and output of the equipment. The output is determined when the registration form is received.

Regarding the compliance rate, Ralph Bohn explained that, in the past, the compliance rate averaged around 90%. However, it was noted this number will change because, in the past, the Division had not recorded as "non-compliance," issues associated with signage and other requirements. Instead, facilities were given a "verbal warning." Now, however, every deviation is being documented and tracked as "non-compliance." Regarding the output of the machines, the compliance rate is around 90%.

Dwayne Woolley asked how many staff members are assigned to conduct the inspections.
Ms. Mechem stated two staff members are responsible to conduct the inspections and administer the program. To date, there are approximately 8,700 pieces of equipment registered and approximately 2,800 facilities registered as an x-ray facility.

Dwayne Woolley asked if the facility is required to notify the Division when a tube is taken out of the machine. Ms. Mechem explained that the rules require a facility to notify the Division within two weeks of a change in x-ray equipment. However, often times, it is not addressed until they go out and inspect the facility and see the old equipment has been replaced or gone. Often times, the Division is notified by the installers that the facility is changing out their equipment.

Dwayne Woolley asked if there are any issues associated with disposal of old x-ray machines.
Ms. Mechem stated that unless the equipment is plugged in and switched "On" there is no concern with their disposal. Usually, the old x-ray machines become scrap steel and up to 10 x-ray tubes can be disposed at the landfill each time. However, if the equipment contains PCBs, they are required to be disposed of differently.

VI. Other Business.

A. Misc. Information Items

Allan Moore, Solid Waste Section Manager, provided the following update regarding potential legislation:

Legislation is being proposed to address concerns the Nuclear Regulatory Commission noted in a recent review of the Waste Management and Radiation Control Program. Senator Adams is the sponsor of this bill.

Waste Management, Scrap Metal Recycling. Scrap metal facilities do not want metal to be considered "waste" and see themselves as dealing with commodities. This could include an effort to define "recycling" in the code and potentially create a tiered process of regulations depending on the risk of the facility. Meetings have been conducted with a number of the facilities and they would like the term "recycling" more clearly defined. Representative Oda is the anticipated sponsor of this bill.

Waste Management, Mattress Recycling. This proposal would create a mattress recycling program patterned after the waste tire recycling program. This bill would impose a fee, at the time of purchase, to fund a program to recycle mattresses and limit the number of mattresses that a citizen could dispose of at a waste facility at any one time. The sponsor is unknown at this time.

H.B. 20, Lead Acid Battery Disposal Sunset Reauthorization, sponsored by Representative Perry. The bill modifies the sunset date of the Lead Acid Battery Disposal Act from July 2016 to July 1, 2026.

H.B.138, Consumer Electronic Device Recycling Report Amendments, sponsored by Representative Perry. This bill modifies the Department of Environmental Quality consumer electronic device recycling reporting requirements. The bill requires manufacturers to submit reports and other information regarding recycling options for their electronic devices. The Division is required to compile the reports and present a summary annually to the Natural Resources, Agriculture, and Environmental Interim Committee and the Public Utilities and Technology Interim Committee. This bill eliminates the requirement to report to the two interim committees.

Dwayne Woolley stated that he is aware of legislation being proposed regarding plastic bag recycling. The bill would include a fee charged to the consumer for each plastic bag used at the time of purchase.

B. Next Board Meeting.

The next Board meeting has been scheduled for February 11, 2016.

VII. Adjourn.

The meeting adjourned at 2:20 p.m.

UST STATISTICAL SUMMARY
February 1, 2015 -- January 31, 2016

PROGRAM

	Febraury	March	April	May	June	July	August	September	October	November	December	January	(+/-) OR Total
Regulated Tanks	3,998	4,000	4,005	3,982	3,972	3,969	3,971	3,993	4,000	3,989	3,991	4,003	**5**
Tanks with Certificate of Compliance	3,906	3,904	3,914	3,906	3,893	3,893	3,889	3,885	3,889	3,887	3,887	3,916	**10**
Tanks without COC	92	96	91	76	79	76	82	108	111	102	104	87	**(5)**
Cumulative Facilitlies with Registered A Operators	1,339	1,340	1,341	1,336	1,331	1,330	1,330	1,333	1,334	1,333	1,332	1,333	**97.80%**
Cumulative Facilitlies with Registered B Operators	1,340	1,341	1,341	1,336	1,331	1,329	1,329	1,334	1,335	1,334	1,333	1,334	**97.87%**
New LUST Sites	8	4	4	7	6	8	14	7	5	4	6	3	**76**
Closed LUST Sites	12	10	10	2	12	13	10	6	9	7	10	9	**110**
Cumulative Closed LUST Sites	4783	4794	4800	4805	4817	4824	4842	4848	4857	4859	4867	4878	**95**

FINANCIAL

	February	March	April	May	June	July	August	September	October	November	December	January	(+/-)
Tanks on PST Fund	2,893	2,891	2,891	2,884	2,870	2,867	2,860	2,846	2,844	2,840	2,840	2,763	**(130)**
PST Claims (Cumulative)	633	633	633	636	638	638	646	647	648	649	647	647	**14**
Equity Balance	-$9,141,111	-$9,956,153	-$9,282,773	-$9,325,810	-$9,241,227	-$8,880,024	-$9,079,617	-$7,810,251	-$7,663,788	-$7,186,058	-$7,441,692	-$7,435,326	**$1,705,785**
Cash Balance	$16,531,905	$15,716,863	$16,390,243	$16,347,205	$16,431,789	$16,792,993	$16,214,452	$16,211,196	$16,357,660	$16,835,389	$16,406,467	$16,412,833	**($119,072)**
Loans	1	1	3	0	0	3	0	0	0	0	2	0	**-1**
Cumulative Loans	98	99	102	102	102	105	105	105	105	105	107	107	**9**
Cumulative Amount	$3,251,573	$3,382,883	$3,691,025	$3,691,026	$3,691,026	$3,727,980	$3,727,980	$3,727,980	$3,727,980	$3,727,980	$3,889,300	$3,889,300	**$637,727**
Defaults/Amount	0	0	0	0	0	0	0	0	0	0	0	0	**0**

	February	March	April	May	June	July	August	September	October	November	December	January	TOTAL
Speed Memos	29	34	36	28	51	34	34	45	52	38	20	18	**419**
Compliance Letters	8	8	7	3	4	6	5	3	14	3	6	13	**80**
Notice of Intent to Revoke	0	0	0	1	0	0	0	0	0	0	0	0	**1**
Orders	2	5	3	5	2	1	0	0	1	0	0	1	**20**

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Five-Year Review for Rule R313-26
March 10, 2016

What is the issue before the Board?	Rule R313-26 of the Utah Administrative Code is up for a five-year review. If this rule is to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review.
What is the historical background or context for this issue?	The Utah Administrative Rulemaking Act (Utah Code Annotated (UCA) §63G-3-305) requires state agencies to review each of their administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to provide agencies with an opportunity to evaluate the rules to assess if the rules should be continued. In performing a five-year review, an agency may consider the need to amend or repeal rules that are archaic in form, are no longer used, are not based on existing statutory authority or are otherwise unnecessary. The Radiation Control Act authorizes the Waste Management and Radiation Control Board to make rules governing the generator site access permit program (UCA §19-3-106.4(3)). Because the Administrative Rulemaking Act's definition of "agency" includes each state board authorized or required by law to make rules, it is appropriate that the Board approve the five-year review of a rule. To retain a rule as part of the Utah Administrative Code, a "Five-Year Notice of Review and Statement of Continuation" must be filed with the Division of Administrative Rules, before the rule's five-year anniversary date. A filing form with the following information must be provided: 1. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize the rule; 2. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and, 3. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any. Completing the form provided by the Division of Administrative Rules and filing it before the five-year review date satisfies the provisions of the Administrative Rulemaking Act with respect to a five-year review.
What is the governing statutory or regulatory citation?	Utah Code Annotated (UCA) §63G-3-305 and Utah Code Annotated §19-3-106.4
Is Board action required?	Yes.

DRC-2016-003242

What is the Division Director's recommendation?	The Division Director recommends the Board approve filing the completed Five-Year Notice of Review and Statement of Continuation forms for R313-26 with the Division of Administrative Rules.
Where can more information be obtained?	For further information, please contact Rusty Lundberg at (801) 536-4257 or Ralph Bohn at (801) 536-0212.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 157262
Utah Admin. Code ref. (R no.): R313-26

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation

Room no.: Third Floor
Building:
Street address 1: 195 N 1950 W
Street address 2:
City, state, zip: SALT LAKE CITY UT 84116-3085
Mailing address 1: PO BOX 144850
Mailing address 2:
City, state, zip: SALT LAKE CITY UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities

Rule Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:
Section 19-3-104 provides the Radiation Control Board authority to make rules to protect the public and environment from sources of radiation. Section 19-3-106.4 requires a generator or waste collector (Broker) of Low-level radioactive waste to obtain a site access permit prior to transferring or shipping waste to a commercial radioactive waste treatment or disposal facility located in Utah. The purpose of this rule is to establish criteria and terms and conditions upon which the Executive Secretary issues permits to generators accessing a land disposal facility located within the state.

Comment Summary

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:
The rule has had two proposed changes that have been published for public comment. One received no comments. The other received one comment which is summarized as follows: Some of the proposed changes may over reach the intent of H.B. 124 (2013 session) and place the State in a position for potential litigation. The rule change was withdrawn.

Justification Information

5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:
It is necessary to continue this rule because it establishes the requirements and conditions for issuing a site access permit to generators or brokers. Once a permit is issued, it allows them to ship waste to a commercial radioactive waste facility in Utah. The rule also provides regulation for compliance inspections of shipments.

Indexing Information

6. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
radioactive waste, generator permit

File Information

7. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for

completion, possibly delaying the effective date.

Agency Authorization

Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 02/17/2016

R313. Environmental Quality, Radiation Control.

R313-26. Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities.

R313-26-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of permits to generators for accessing a land disposal facility located within the State and requirements for shippers.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-26 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-26-2. Definitions.

As used in Rule R313-26, the following definitions apply:

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Generator Site Access Permit" means an authorization to deliver radioactive wastes to a land disposal facility located within the State of Utah.

"Land disposal facility" has the same meaning as that given in Section R313-25-2.

"Manifest" means the document, as defined in Appendix G of 10 CFR 20.1001 to 20.2402 (2006),used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

"Packager" means Waste Processor, Waste Collector or Waste Generator as defined in Section R313-26-2.

"Radioactive waste" means any material that contains radioactivity or is radioactively contaminated and is intended for ultimate disposal at a licensed land disposal facility in Utah.

"Shipper" means the person who offers radioactive waste for transportation, typically consigning this type of waste to a land disposal facility.

"Waste Collector," "Waste Generator," and "Waste Processor" has the meaning as defined in Appendix G of 10 CFR 20.1001 to 20.2402 (2006).

R313-26-3. Generator Site Access Permits.

A Waste Generator, Waste Collector, or Waste Processor shall obtain a Generator Site Access Permit from the Director before transferring radioactive waste to a land disposal facility in Utah.

(1) Generator Site Access Permit applications shall be filed on a form prescribed by the Director.

(2) Applications shall be received by the Director at least 30 days prior to any shipments being delivered to a land disposal facility in Utah.

(3) Each Generator Site Access Permit application shall include a certification to the Director that the shipper shall comply with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions of the land disposal facility regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

(4) Generator Site Access Permit fees shall be assessed annually by the Director based on the following classifications:

(a) Waste Generators shipping more than 1000 cubic feet of radioactive waste annually to a land disposal facility in Utah.

(b) Waste Generators shipping 1000 cubic feet or less of radioactive waste annually to a land disposal facility in Utah.

(c) Waste Collectors or Waste Processors shipping radioactive waste to a land disposal facility in Utah.

(5) Generator Site Access Permits shall be valid for a maximum of one year from the date of issuance. The Director may modify individual Generator Site Access Permit terms and prorate the annual fees accordingly for administrative purposes.

(6) Generator Site Access Permits may be renewed by filing a new application with the Director. To ensure timely renewal, generators and brokers shall submit applications, for Generator Site Access Permit renewal, a minimum of 30 days prior to the expiration date of their Generator Site Access Permit.

(7) Generator Site Access Permit fees are not refundable.

(8) Transfer of a Generator Site Access Permit shall be approved by the Director.

(9) The number of Generator Site Access Permits required by each generator shall be determined by the following requirements:

(a) Generators who own multiple facilities within the same state may apply for one Generator Site Access Permit, provided the same contact person within the generator's company shall be responsible for responding to the Director for matters pertaining to the waste shipments.

(b) Facilities which are owned by the same generator and located in different states shall obtain separate Generator Site Access Permits.

(c) Persons who both generate and are either a Waste Processor or Waste Collector shall obtain separate Generator Site Access Permits.

R313-26-4. Shipper's Requirements.

(1) The shipper shall provide on demand the Director a copy of the Nuclear Regulatory Commission's "Uniform Low Level Radioactive Waste Manifest" for shipments consigned for disposal within Utah.

(2) The appropriate Generator Site Access Permit number(s) shall be documented on the manifest.

(3) Waste Generators, Waste Processors and Waste Collectors shall ensure that all Generator Site Access Permits are current prior to shipment of waste to a land disposal facility located in the state of Utah, and that the waste will arrive at the land disposal facility prior to the expiration date of the Generator Site Access Permits.

(4) A Waste Collector, Waste Processor or Waste Generator shall ensure all radioactive waste contained within a shipment for disposal at a land disposal facility in the state is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility.

(5) The shipper shall ensure waste material is contained where no release of material can occur under conditions normally incident to transportation and shall utilize waste container(s)/package(s) where containment integrity has not been compromised.

R313-26-5. Land Disposal Facility Licensee Requirements.

The land disposal facility licensee shall ensure that Waste Generators, Waste Collectors and Waste Processors have a current, unencumbered Generator Site Access Permit prior to accepting a Waste Generator's, Waste Collector's or Waste Processor's waste.

R313-26-6. Enforcement.

Generator Site Access Permittees shall be subject to the provisions of Rule R313-14 for violations of federal regulations, state rules or requirements in the current land disposal facility operating license regarding radioactive waste packaging, transportation, labeling, notification, classification, marking, manifesting or description.

KEY: radioactive waste generator permit
Date of Enactment or Last Substantive Amendment: September 22, 2011
Notice of Continuation: April 6, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-106.4

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Five-Year Review for Rules R315-15, R315-17, R315-101, and R315-102
March 10, 2016

What is the issue before the Board?	Rule R315-101 of the Utah Administrative Code is up for a five-year review. If this rule is to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review. In addition, the Director is proposing that Notices of Continuation be filed for Rules R315-15, R315-17 and R315-102. By filing Notices of Continuation for all of these rules at this time, all of the hazardous waste rules will be on the same five-year review schedule. This will make administration of the five-year review process much easier and will ensure that reviews are not missed.
What is the historical background or context for this issue?	The Utah Administrative Rulemaking Act (Utah Code Annotated (UCA) §63G-3-305) requires state agencies to review each of their administrative rules within five years of the rule's original effective date or the last five-year review. The purpose of the review is to provide agencies with an opportunity to evaluate the rules to assess if the rules should be continued. In performing a five-year review, an agency may consider the need to amend or repeal rules that are archaic in form, are no longer used, are not based on existing statutory authority or are otherwise unnecessary. The Solid and Hazardous Waste Act authorizes the Waste Management and Radiation Control Board to make rules (UCA §19-6-105 and §19-6-104). Because the Administrative Rulemaking Act's definition of "agency" includes each state board authorized or required by law to make rules, it is appropriate that the Board approve the five-year review of a rule. To retain a rule as part of the Utah Administrative Code, a "Five-Year Notice of Review and Statement of Continuation" must be filed with the Division of Administrative Rules, before the rule's five-year anniversary date. A filing form with the following information must be provided: 1. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize the rule; 2. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and, 3. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any. Completing the form provided by the Division of Administrative Rules and filing it before the five-year review date satisfies the provisions of the Administrative Rulemaking Act with respect to a five-year review.

What is the governing statutory or regulatory citation?	Utah Code Annotated (UCA) §63G-3-305 and Utah Code Annotated §19-6-105 and §19-6-104.
Is Board action required?	Yes.
What is the Division Director's recommendation?	The Division Director recommends the Board approve filing the completed Five-Year Notice of Review and Statement of Continuation forms for R315-15, R315-17, R315-101, and R315-102 with the Division of Administrative Rules.
Where can more information be obtained?	For further information, please contact Ralph Bohn at (801) 536-0212.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 157236
Utah Admin. Code ref. (R no.): R315-15

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

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Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Standards for the Management of Used Oil

Rule Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:
Section 19-6-704 instructs the Waste Management and Radiation Control Board that the board shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part and to comply with 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to manage used oil under 40 CFR 279. Rule R315-15 meets this requirement.

Comment Summary

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:
The rule was modified three times since the last 5 year review. No comments were receive on two of the modifications. The third modification received comments as follows: Proposed changes remove the requirement of the Agency to offer a split sample of material sampled during an Agency inspection. Proposed changes do not define containers and tanks. Comments related to the secondary containment requirements for containers and tanks for used oil storage. The burden of proof for PCB content should be placed on the used oil generator. The term suspicious is subjective. Requests to remove the requirement for laboratories to be Utah certified from the proposed changes to R315-15, or adding language that allows use for non-Utah certified laboratories as means of testing based on approval from the Director. Recommendation to change the proposed text in 315-15-18(e)(3) to read "individual Aroclors (registered trademark) shall be reported with a reporting limit of 2ppm or less."

Justification Information

5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:
The Statute (19-6-740) requires that rules be maintained that allow the state to maintain authorization from US EPA for a used oil program. The current rules meet this requirement. None of the comments received objected to the rule as a whole. The comments were on specific changes to the rule. All comments were reviewed and several suggested changes that made he rule clearer of better. Other comments were found to be inconsistent with the rule as a whole or were unnecessary and were rejected.

Indexing Information

6. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous waste, used oil

File Information

7. Attach an RTF document containing the text of this rule change (filename):
   There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency Authorization

Agency head or designee, and title:	Scott Anderson Director	Date (mm/dd/yyyy): 02/08/2016

R315. Environmental Quality, Solid and Hazardous Waste.
R315-15. Standards for the Management of Used Oil.
R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials that are subject to regulation as used oil under R315-15. This section also identifies some materials that are not subject to regulation as used oil under R315-15, and indicates whether these materials may be a hazardous waste as defined under R315-2.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in R315-15-1.2, the requirements of R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste which are listed in R315-2-10 are subject to regulation as hazardous waste under R315-2 rather than as used oil under R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10. A person may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(2) Characteristic hazardous waste. A mixture of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in R315-2-9 and a mixtures of used oil and hazardous waste that is listed in R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in R315-2-9 are subject to:

(i) Except as provided in R315-15-1(b)(2)(iii), regulation as hazardous waste under R315-1 through R315-14, and R315-50 rather than as used oil under R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in R315-2-9; or

(ii) Except as specified in R315-15-1.1(b)(2)(iii), regulation as used oil under R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under R315-2-9.

(iii) Regulation as used oil under R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in R315-15-1.1(c)(2) materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to R315-15, and

(ii) If applicable, are subject to the hazardous waste regulations R315-1 through R315-14, R315-50, and R315-101 and 102.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in (d)(2) mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under R315-15.

(2) Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 after the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of R315-1 through R315-14 and R315-50 as provided in R315-2-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under R315-15.

(3) Except as provided in R315-15.1.1(e)(4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations R315-1 through R315-14, and R315-50 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to R315-15.

(f) Wastewater. Wastewater contaminated with de minimis quantities of used oil, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, are not subject to the requirements of Rule R315-15. For purposes of this paragraph only, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of R315-15. The used oil is subject to the requirements of R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of R315-15, provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(4) Except as provided in R315-15-1.1 (g)(5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of R315-15 only if the used oil meets the specification of R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of R315-15. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of R315-15, marketers and burners of used oil who market used oil containing PCBs at concentrations greater than or equal to 2 ppm are subject to the requirements found in R315-15-18 and 40 CFR 761.20(e).

(j) Inspections. Any duly authorized employee of the Director, may, at any reasonable time and upon presentation of credentials, have access to and the right to copy any records relating to used oil, and inspect, audit, or sample. Any authorized employee obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. The employee may also make record of the inspection by photographic, electronic, audio, video, or any other reasonable means.

(k) Violations, Orders, and Hearings. If the Director has reason to believe a person is in violation of any provision of R315-15, procedural requirements for compliance shall follow Utah Code Annotated 19-6-721 and Utah Administrative Code R305-7.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under R315-15 until:

(a) It has been demonstrated not to exceed any allowable levels of the constituents and properties shown in Table 1;

(b) The person making that claim complies with R315-15-7.3, R315-15-7.4, and R315-15-7.5(b); and

(c) The used oil is delivered to a used oil burner.

TABLE 1
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum

Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The allowable levels in Table 1 do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste. See R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption described in R315-15-1.1(b)(1). Such used oil is subject to R315-14-7, rather than R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the marketing and burning of used oil containing any quantifiable level (2 ppm) of PCBs are found in 40 CFR 761.20(e), 2013 edition, incorporated by reference, and R315-15-18. Prohibition of PCB oil dilution is described in 40 CFR 279.10 and 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Director, a person may not place, discard, or otherwise dispose of used oil in any of the following manners:

(a) Surface impoundment and waste piles. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under R315-7 or R315-8.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Utah Code Annotated 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Director; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water.

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Utah Code Annotated 19-6-706(4)(a) except for the requirements of 19-6-706(i) and (ii).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities in accordance with Utah Code Annotated 19-6-706 (2) (a) if:

(1) To the extent that all oil has been reasonably removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 USED OIL FILTERS

(a) Disposal of Used Oil Filters. A person may dispose of a nonterne plated used oil filter as a non-hazardous solid waste when that filter is gravity hot-drained by one of the methods described in R315-15-1.6(b) and is not mixed with hazardous waste defined in R315-2.

(b) "Gravity hot-drained" means drained for not less than 12 hours near operating temperature but above 60 degrees Fahrenheit. A nonterne used oil filter is a container of used oil and is subject to R315-15 until it is gravity hot-drained by one of the following methods:

(1) puncturing the filter anti-drain back valve or the filter dome end and gravity hot-draining;

(2) gravity hot-draining and crushing;

(3) dismantling and gravity hot-draining; or

(4) any other equivalent gravity hot-draining method authorized by the Director that will remove used oil from the filter at least as effectively as the methods listed in R315-15-1.6(b)(1) through (3).

1.7 DEFINITIONS

(a) Definitions of terms used in R315-15 are found in: R315-1.7(b) through (j); and R315-1-1.

(b) The term "de minimis quantities of used oil" defined in Utah Code Annotated 19-6-706(4)(b), and 19-6-708(3)(a) means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations and does not apply to used oil discarded as a result of abnormal operations resulting in substantial leaks, spills, or other releases. Nor does it apply to accumulations of quantities of used oil that pose a potential threat to human health or the environment.

(c) "Financial responsibility" means the mechanism by which a person who has a financial obligation satisfies that obligation.

(d) "Used oil" means any oil, refined from crude oil or synthetic oil, that has been used and as a result of that use is contaminated by physical or chemical impurities. Used oil includes engine oil, transmission fluid, compressor oils, metalworking oils, hydraulic oil, brake fluid, oils used as buoyants, lubricating greases, electrical insulating, and dialectic oils.

(e) "Polychlorinated biphenyl (PCB)" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

(f) "On-specification used oil" means used oil that does not exceed levels of constituents and properties specified in R315-15-1.2.

(g) "Off-specification used oil" means used oil that exceeds levels of constituents and properties specified in R315-15-1.2.

(h) "Parts per million (ppm)" means a weight-per-weight ratio used to describe concentrations. Parts per million (ppm) is the number of units of mass of a contaminant per million units of total mass (e.g., micrograms per gram).

1.8 LABORATORY ANALYSES

Laboratory analyses used to satisfy the requirements of R315-15 shall be performed by a laboratory that holds a current Utah Certification for environmental laboratories issued by the Utah Department of Health, Laboratory Improvement under R444-14 Utah Administrative Code. The laboratory shall be certified for the method(s) and analyte(s) applied to generate the environmental data.

R315-15-2. Standards for Used Oil Generators.

2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(2) Vessels. Vessels at sea or at port are not subject to R315-15-2. For purposes of R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the used oil in compliance with R315-15-2 once the used oil is transported ashore. The co-generators may decide among themselves which party will fulfill the requirements of R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of R315-15, except for the prohibitions of R315-15-1.3 and cleanup requirements of R315-15-9.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15.2.1(b)(1) through (5):

(1) Generators who transport used oil, except under the self-transport provisions of R315-15-2.5(a) and (b), shall also comply with R315-15-4.

(2)(i) Except as provided in R315-15-2.1(b)(2)(ii), generators who process or re-refine used oil must also comply with R315-15-5.

(ii) Generators who perform the following activities are not processors, provided that the used oil is generated onsite and is not being sent offsite to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge or reuse in accordance with section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive used oil to the extent possible in accordance with R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater in accordance with R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, shall also comply with R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first certify that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Generators who dispose of used oil shall also comply with R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with R315-15-1.1(b).

(b) The rebuttable presumption for used oil found in R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under this rebuttable presumption, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil or fluids containing chlorinated paraffins, if they are processed through a tolling agreement to reclaim the metalworking oils or fluids, and certain used oils removed from refrigeration units described in R315-15-1.1(b)(1)(ii)(B).

2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of R315-15-2. Used oil generators are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste. In addition, used oil generators are subject to the requirements of R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and containers storage areas shall be managed to prevent releases of used oil to the environment.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

2.4 ON-SITE BURNING

On-site burners shall comply with R315-15-6 and, if applicable, shall obtain an Air Quality permit.

(a) Generators may burn used oil in used oil-fired space heaters without a used oil permit provided that:

(1) The heater burns only used oil that the owner or operator generates;

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(3) The combustion gases from the heater are vented to the outside ambient air;

(4) The generator has knowledge that the used oil has not been mixed with hazardous waste; and

(5) The used oil is being legitimately burned to utilize its energy content.

(b) Used Oil Collection Center(UOCC). If it is registered as a Used Oil Collection Center as authorized in R315-15-3, the UOCC may burn used oil in used oil fired space heaters without a used oil permit under the provision described in R315-15-2.4(a) provided that the used oil is received from household do-it-yourselfer generators or farmers described in R315-15-2.1(a)(4) or the used oil is received from other generators and has been certified to meet the used

oil fuel specifications of R315-15-1.2 by a registered used oil marketer in accordance with R315-15-7.

2.5 OFF-SITE SHIPMENTS

Except as provided in R315-15-2.5(a) through (c), a generator shall ensure that its used oil is transported only by a transporter who has obtained a Utah used oil transporter permit and has a current used oil handler certificate issued by the Director and an EPA identification number.

(a) Self-transportation of small amounts to approved collection centers. A generators may transport, without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. A generator may transport, without an EPA identification number, a used oil transporter permit, or used oil handler certificate, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned, operated, or both by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number, a used oil transporter permit, or a current used oil handler certificate if the used oil is reclaimed under a contractual agreement under which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A and B

(a) Applicability. R315-15-3.1 applies to owners or operators of Type A and B used oil collection centers:

(1) Type A used oil collection center. Type A and B is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers (DIYers) in quantities not exceeding five gallons per visit.

(2) Type B used oil collection center. Type B used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from farmers as required by R315-15-2.1(a)(4) in quantities not exceeding 55 gallons per visit from farmers and not exceeding five gallons per visit from household do-it-yourselfers.

(b) Type A or B used oil collection center requirements. Owners or operators of Type A or B used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2.

(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil as a used oil collection center as required by R315-15-13.1; and

(3) Keep records of used oil collected by the collection center. This does not include used oil generated on site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volume of used oil picked up by a permitted transporter and the transporter's name and EPA identification number.

(4) A Type A or B used oil collection center shall not accept used oil from generators other than those specified in R315-15-3.1(1) and (2).

(c) Reimbursements. Type A or B used oil collection centers are classified as DIYer used oil collection centers and may be reimbursed as described in R315-15-14.

3.2 USED OIL COLLECTION CENTERS - TYPES C AND D

(a) Applicability. R315-15-3.2 applies to owners or operators of Type C and D used oil collection centers.

(1) Type C used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type C used oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in R315-15-2.1(a)(4).

(2) A Type D used oil collection center is any site or facility that only accepts/aggregates and stores used oil collected from used oil generators regulated under R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of R315-15-2.5(a). Type D used oil collection centers do not qualify for reimbursement.

(b) Used oil collection center Type C and D requirements. Owners or operators of Types C and D used oil collection centers shall:

(1) Comply with the generator standards in R315-15-2;

(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil; and

(3) Keep records of used oil received from off-site sources and transported from the collection center. This does not include used oil generated onsite from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator or, if unavailable, a written description of how the used oil was received;

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil collected by a permitted transporter and the transporter's name and federal EPA identification number.

(c) Reimbursements. Type C used oil collection centers may be reimbursed as described in R315-15-14 for household do-it-yourselfer and used oil generated by farmers as defined in R315-15-3.1. Other generator used oil does not meet the reimbursement criteria as do-it-yourselfer used oil and does not qualify for reimbursement.

3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. R315-15-3.3 applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the

owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of 55 gallons or less under the provisions of R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in R315-15-13.1, and comply with do-it-yourselfer collection center standards in R315-15-3.1. Used oil aggregation points that accept used oil from other generators shall register as collection centers, as described in R315-15-13.2, and comply with collection center standards in R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in R315-15-2.

R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

4.1 APPLICABILITY

(a) General. R315-15-4 applies to all used oil transporters, except as provided in R315-15-4.1(a)(1) through (4). Persons who transport used oil, persons who collect used oil from more than one generator and transport the collected used oil, and owners and operators of used oil transfer facilities are used oil transporters. Except as provided by R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Director prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by R315-15-13.4. Used oil transporters and operators of used oil transfer facilities shall obtain and maintain a used oil handler certificate in accordance with R315-15-13.8.

(1) R315-15-4 does not apply to on-site transportation.

(2) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) R315-15-4 does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in R315-15-2.5(b).

(4) R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of R315-15. Except as provided in R315-15-4.1(a)(1) through (a)(3), R315-15-4 does, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters are subject to the requirements of R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Vehicles used to transport hazardous waste. Unless vehicles previously used to transport hazardous waste are emptied as described in R315-2-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Vehicles used to transport PCB-contaminated material. Unless vehicles previously used to transport PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S, (2013 edition, incorporated by reference), prior to transporting used oil, the used oil is considered to have been mixed with PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761.

(e) Tanks, containers, and piping that contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to transferring used oil, the used oil is considered to have been mixed with PCB-contaminated material in accordance with R315-15-18 and 40 CFR 761 Subpart S.

(f) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of R315-15 as indicated in R315-15-4.1 (f)(1) through (5):

(1) Transporters who generate used oil shall also comply with R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in R315-15-4.2, shall also comply with R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with R315-15-8.

4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in R315-15-4.2(b), used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in R315-15-5.

(c) Transporters of used oil that is removed from oil-bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in R315-15-5.

4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Director of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12 or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number transporter, permit number, and current used oil handler certificate issued by the Director;

(2) A used oil processing/re-refining facility that has obtained an EPA identification number, processing/refining permit, and current used oil handler certificate issued by the Director;

(3) An off-specification used oil burner facility that has obtained an EPA identification number, off-specification used oil burner permit, and current used oil handler certificate issued by the Director;

(4) A used oil transfer facility that has obtained an EPA identification number, transfer facility permit, and current used oil handler certificate issued by the Director; or

(5) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with R315-15-9.

(d) The words "Used Oil" shall be clearly visible, in letters at least two inches high, on all vehicles transporting bulk used oil.

4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-4.5(a), (b), and (c) shall be maintained by the transporter for at least three years.

4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, in accordance with 40 CFR 112, in addition to the requirements of R315-15-4. Used oil transporters are also subject to the standards of R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-4.

(a) Applicability. R315-15-4 applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements found in R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under R315-7 or R315-8.

(c) Condition of units. Containers and aboveground tanks and tank systems, including their associated pipes and valves, used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(3) Tanks and containers for storage of used oil must be closed during storage except when adding or removing used oil.

(4) Tanks and container storage areas shall have a containment system that is designed and operated in accordance with R315-8-9.

(d) Secondary containment. Containers and aboveground tanks used to store used oil at transfer facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary system shall be of sufficient extent to prevent any used oil releases from tanks and containers in R315-15-4.6(b), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment, including sumps, within 24 hours of discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water containment structures at the facility. Any used oil in such sumps beyond a surface sheen shall be removed within 24 hours of discovery.

(6) Transporters loading to or from rail tanker cars shall also comply with secondary containment requirements of R315-15-4.10.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with R315-15-9.

4.7 TRACKING

(a) Acceptance. Used oil transporters and transfer facilities shall keep a written record of each used oil shipment accepted for transport. These records shall take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Written records for each shipment shall include:

(1) The name and address of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) Documentation demonstrating the transporter has met the halogen determination requirements of R315-15-4.5 and, where applicable, the PCB testing requirements of R315-15-18;

(4) The quantity of used oil accepted;

(5) The date of acceptance; and

(6)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, transfer facility, burner, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters and transfer facilities shall keep a written record of each shipment of used oil that is delivered to another used oil transporter, a transfer facility, burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5)(i) Except as provided in R315-15-4.7(a)(6)(ii), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in R315-15-4.7(b)(1) through (b)(4) for each shipment of used oil exported outside of Utah.

(d) Record retention. The records described in R315-15-4.7(a), (b), and (c) shall be maintained for at least three years at a specified facility approved by the Director.

(e) Reporting. Used oil transporter and transfer facilities shall report annually by March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.4(d).

4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in R315-15-1.1(e).

4.9 ACCEPTANCE OF OFF-SITE USED OIL

Used oil transporters and transfer facilities accepting used oil from off-site shall ensure that the transporters delivering the used oil have obtained a current used oil transporter permit and an EPA identification number.

4.10 TRANSFER OF USED OIL TO OR FROM RAIL CARS

(a) Spill prevention. Facilities or transporters loading or unloading used oil from rail cars shall:

(1) Use spill pans beneath rail cars being loaded or unloaded with used oil. These spill pans shall be placed inside and outside of the track below the rail car loading port in such a way as to capture releases that might occur during the loading and unloading operations;

(2) Securely park used oil transportation trucks on a loading pad during the loading and unloading of used oil between those trucks and the rail tanker car. The loading pad shall be constructed of asphalt or concrete, or an equivalent system approved by the Director, and shall be sloped or bermed in such a way as to contain used oil spills;

(3) Be loaded and unloaded through a valve or port located on top of the rail car unless otherwise approved by the Director; and

(4) Transporter personnel shall actively monitor the transfer during the entire loading and unloading process.

(b) Storage at rail loading and unloading facilities. If, during the normal course of transportation, used oil remains at the loading and unloading facility for more than 24 hours but less than 35 days, the facility is subject to regulation as a used oil transfer facility as defined in R315-15-4.6 and is required to apply for a permit as a used oil transfer facility as defined in

R315-15-13.4. A transfer facility that stores used oil for more than 35 days is subject to the processor/re-refiner requirements as defined in R315-15-5.

R315-15-5. Standards for Used Oil Processors and Re-Refiners.

5.1 APPLICABILITY

(a) The requirements of R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of R315-15 as indicated in R315-15-5.1(b)(1) through (b)(7).

(1) Processors/re-refiners who generate used oil shall also comply with R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with R315-15-4.

(3) Processor/re-refiners who burn off-specification used oil for energy recovery shall also comply with R315-15-6 except where:

(i) The used oil is only burned in an on-site space heater that meets the requirements of R315-15-2.4; or

(ii) The used oil is only burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall also comply with R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with R315-15-8.

(6) Tanks, containers, and piping that contained hazardous waste. Unless tanks, containers, and piping that previously contained hazardous waste are emptied as described in R315-2-7 prior to storing or transferring used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(7) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are decontaminated as described in 40 CFR 761 Subpart S prior to storing or transferring of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed in accordance with R315-15-18 and 40 CFR 761 Subpart S, as applicable.

(c) Processors/re-refiners shall obtain a permit from the Director prior to processing or re-refining used oil. An application for a permit shall contain the information required by R315-15-13.5.

5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, surface water, or groundwater that could threaten human health or the environment.

(2) Required equipment. All facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice and signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency. Records of such testing and maintenance shall be kept for three years.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in R315-15-5.3(a)(2).

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in R315-15-5.3(a)(2).

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the facility's operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processor and re-refiner facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil that could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with R315-15-5.3(b)(1) and (6) in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, groundwater, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, in accordance with R315-15-5.3(a)(6).

(iv) The plan shall list names, addresses, and phone numbers, of all persons qualified to act as 24-hour emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also R315-15-5.3(b)(5).

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health and to the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion that could threaten human health, or the environment, outside the facility, the coordinator shall report the findings as follows:

(A) If the emergency coordinator assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) The emergency coordinator shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Director, and appropriate local authorities that the facility is in compliance with R315-15-5.3(b)(6)(viii)(A) and (B) before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Director. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying and documenting generator knowledge of the halogen content of the used oil in light of the materials and processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from EPA SW-846, Edition III, Update IV to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10.

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

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

5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, found in 40 CFR 112, in addition to the requirements of R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements found in R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks including their associated pipes and valves used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration;

(2) Not leaking; and

(3) Closed during storage except when used oil is being added or removed.

(c) Secondary containment. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities including their pipe connections and valves shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground; or

(iii) An equivalent secondary containment system approved by the Director.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) The secondary containment system shall be of sufficient size and volume to prevent any used oil released from tanks and containers described in R315-15-5.5(a), from migrating out of the system to the soil, groundwater, or surface water.

(4) Water, used oil, or other liquids shall be removed from secondary containment within 24 hours of their discovery.

(5) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in such sumps shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter. Nonhazardous solid waste must be managed in accordance with R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in R315-15-5.5(f)(1)(i), then the owner or

operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, R315-7-21.4.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under R315-2.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing/re-refining facilities shall develop and follow a written used oil analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15-5.4, R315-15-18, and, if applicable, the marketer requirements in R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in R315-15-5.4. The plan shall specify the following:

(1) Whether sample analyses documented generator knowledge of the halogen content of the used oil, or both, will be used to make this determination.

(2) If sample analyses are used to make this determination, the plan shall specify:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-50-6; or

(B) A method shown to be equivalent under R315-2-15;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite; and

(iii) The methods used to analyze used oil for the parameters specified in R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in R315-15-7.3. At a minimum, the plan shall specify the following if R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under R315-2-15;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a written record of each used oil shipment accepted for processing/re-refining. These records shall take the form of a log,

invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Written documentation that the processor/re-refiner has met the rebuttable presumption requirements of R315-15-5.4 and the PCB testing requirements of R315-15-18.

(b) Delivery. Used oil processor/re-refiners shall keep a written record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility that will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years at the permitted facility or other location approved by the Director.

5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator of the processor/re-refiner facility shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually March 1 to the Director. The report shall be consistent with the requirements of R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil offsite shall ship the used oil using a used oil transporter who has obtained an EPA identification number, a permit, and current used oil handler certificate issued by the Director.

5.10 ACCEPTANCE OF OFF-SITE USED OIL

Processors accepting used oil from off site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

5.11 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in R315-15-1.1(e).

R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.

6.1 APPLICABILITY

(a) General. A used oil burner is a person who burns used oil for energy recovery. An on-specification used oil burner is a person who only burns used oil that meets the specifications of R315-15-1.2. Used oil that has not been determined to be on-specification used oil by a Utah-registered marketer shall be managed as off-specification used oil except as described R315-15-2.4. An off-specification used oil burner is a person who burns used oil not meeting the specifications found in R315-15-1.2 for energy recovery. Facilities burning used oil for energy recovery under the following conditions are subject to R315-15-6.1(a) and (b) and R315-15-6.2(b) and (c), but not other portions of R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a Utah-registered marketer who claims and has demonstrated that the used oil meets the used oil fuel specifications set forth in R315-15-1.2 and who delivers the used oil in the manner set forth in R315-15-7.5(b).

(b) Other applicable provisions. In addition to the requirements of R315-15-6.1(a), used oil burners who conduct the following activities are subject to the requirements of R315-15 as indicated below.

(1) Burners who generate used oil shall comply with R315-15-2;

(2) Burners who transport used oil shall comply with R315-15-4;

(3) Except as provided in R315-15-6.2(b)(2), burners who process or re-refine used oil shall comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2 shall comply with R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with R315-15-8; and

(6) Burners who collect used oil shall also comply with the collection center requirements in R315-15-3. Burners may only burn used oil collected from other generators if that used oil has been certified to be on-specification used oil by a Utah-registered used oil marketer in compliance with R315-15-7. Burners who collect and burn used oil that is not "do-it-yourselfer" or farmer-generated as described in R315-15-2.1(a)(1) and (4), shall obtain a used oil marketer registration before burning such oil and shall comply with the provisions of R315-15-7.

(7) Tanks, containers, and piping that previously contained listed hazardous waste. Unless tanks, containers, and piping that previously contained listed hazardous waste are decontaminated as described in R315-2-7 prior to storing used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of R315-15-1.1(b), the hazardous waste and used oil mixture is determined not to be hazardous waste.

(8) Tanks, containers, and piping that previously contained PCB-contaminated material. Unless tanks, containers, and piping that previously contained PCB-contaminated material are

decontaminated as described in 40 CFR 761 Subpart S prior to transfer of used oil, the used oil is considered to have been mixed with the PCB-contaminated material and shall be managed as PCB-contaminated material in accordance with R315-15-18.

(c) Off-specification used oil burner permit. Off-specification used oil burners shall obtain a permit from the Director prior to burning off-specification used oil unless exempted by R315-15-13.6(b)(5). An application for a permit shall contain the information required by R315-15-13.6(b). Off-specification used oil burners shall also obtain a used oil handler certificate in accordance with R315-15-13.8.

(d) Testing of used oil fuel for PCBs. Used oil to be burned for energy recovery is presumed to contain quantifiable levels, 2 ppm or greater, of PCBs unless a used oil marketer obtains laboratory analyses that the used oil fuel does not contain quantifiable levels of PCBs. The person who first claims that the used oil fuel does not contain a quantifiable level of PCBs shall obtain analyses or other information to support the claim, as described in R315-15-18.

6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in R315-1-1(b), which incorporates by reference 40 CFR 260.10;

(2) Boilers, as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under R315-7-22 or R315-8-15.

(b)(1) With the exception of the aggregation activity described in R315-15-6.2(b)(2), used oil burners may not process used oil unless they also comply with R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of marketing on-specification used oil without also complying with the processor/re-refiner requirements in R315-15-5.

(c) Burning of hazardous waste. Used oil burners may only burn hazardous waste if they are permitted to do so by the Director.

6.3 NOTIFICATION FOR OFF-SPECIFICATION USED OIL BURNERS

(a) Identification numbers. Off-specification used oil burners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12.; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by

(1) Testing the used oil;

(2) Applying documented generator knowledge of the halogen content of the used oil in light of the materials and processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III update IV, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed through a tolling arrangement, as described in R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

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

(d) Record retention. Records of analyses conducted or information used to comply with R315-15-6.4(a), (b), and (c) shall be maintained at the burner facility or another facility approved by the Director for at least 3 years.

6.5 USED OIL STORAGE AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of R315-15-6. Used oil burners are also subject to the standards and requirements of R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of R315-15-6.

(a) Storage units. Off-specification used oil burners may not store used oil in units other than tanks, containers or units subject to regulation under R315-7 and R315-8.

(b) Condition of units. Containers and aboveground tanks used to store oil at off-specification used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking.

(c) Secondary containment. Containers and aboveground tanks used to store off-specification used oil at burner facilities, including their pipe connections and valves, shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of aboveground tanks meet the ground.

(iii) Other equivalent secondary containment approved by the Director.

(2) The entire containment system, including walls and floor, shall be of sufficient extent and sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(3) Any accumulation of water, used oil, or other liquid shall be removed from secondary containment within 24 hours of discovery.

(4) Used oil shall not be stored or allowed to accumulate in sumps and similar water-containment structures at the facility. Any used oil in sumps and similar water-containment structures shall be removed within 24 hours of its discovery.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of R311-202-1, a burner shall comply with R315-15-9.

6.6 TRACKING FOR OFF-SPECIFICATION USED OIL FACILITIES

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted;

(6) The date of acceptance; and

(7) Documentation demonstrating that the transporter has met the rebuttable presumption requirements of R315-15-6.4 and, where applicable, the PCB testing requirements of R315-15-18;

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified the Director of the location and general description of the burner's used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-6.7(a) shall be maintained, at the permitted facility or other location approved by the Director, for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

6.8 MANAGEMENT OF RESIDUES AT OFF-SPECIFICATION USED OIL BURNER FACILITIES

Off-specification used oil burners who generate residues from the storage or burning of used oil shall manage the residues as specified in R315-15-1.1(e).

6.9 ACCEPTANCE OF OFF-SITE USED OIL

Off-specification used oil burners accepting used oil from off-site shall ensure that transporters delivering used oil to their facility have obtained a current used oil transporter permit and an EPA identification number.

R315-15-7. Standards for Used Oil Fuel Marketers.

7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is a used oil fuel marketer and is subject to the requirements of R315-15-7 and R315-15-13.7:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First determines and claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in R315-15-1.2.

(b) The following persons are not used oil fuel marketers subject to R315-15-7:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of R315-15-1.2.

(c) Any person subject to the requirements of R315-15-7 shall also comply with one of the following:

(1) R315-15-2 - Standards for Used Oil Generators;

(2) R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number and a used oil handler certificate, both issued by the Director as required by R315-15-13.7 and R315-15-13.8.

7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in R315-15-6.2(a).

7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A used oil fuel marketer who is a used oil generator, transporter, transfer facility, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of R315-15-1.2 and the PCB requirements of R315-15-18 by performing analyses or obtaining copies of analyses or other information approved by the Director documenting that the used oil fuel meets the specifications. Used oil is not considered to be on-specification until it has been certified as such by a registered used oil fuel marketer in accordance with the used oil fuel marketer's analysis plan, approved by the Director.

(b) Record retention. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under R315-15-1.2 and the PCB requirements of R315-15-18 shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Director of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12; or

(2) A letter to the Director requesting an EPA identification number. The letter shall include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, transfer facility, processor/re-refiner, or burner who first certifies that used oil that is to be burned for energy recovery meets the fuel specifications under R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specifications required under R315-15-7.3(a) and the PCB requirements of R315-15-18.

(c) Record retention. The records described in R315-15-7.5(a) and (b) shall be maintained for at least three years.

7.6 NOTICES

(a) Certification. Before a used oil generator, transporter, transfer facility, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified the Director stating the location and general description of used oil management activities; and

(2) The burner has obtained an EPA identification number and, if the off-specification used oil is burned in Utah, an off-specification used oil burner permit and current used oil handler certificate from the Director; and

(3) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in R315-15-6.2(a).

(b) Certification retention. The certification described in R315-15-7.6(a) of this section shall be maintained for three years, at the permitted facility or other location approved by the Director, from the date the last shipment of off-specification used oil is shipped to the burner.

7.7 LABORATORY ANALYSES

Used oil marketers shall use a Utah-certified laboratory, as specified in R315-15-1.8, to satisfy the analytical requirements of R315-15-7.

R315-15-8. Standards for the Disposal of Used Oil.

8.1 APPLICABILITY

The requirements of R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.

8.2 DISPOSAL

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and that cannot be recycled in accordance with R315-15 shall be managed in accordance with the hazardous waste management requirements of R315-1 through R315-14, and R315-50.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318.

8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING

The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

R315-15-9. Emergency Controls.

9.1 IMMEDIATE ACTION

In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(1) Stop the release;

(2) Contain the release;

(3) Clean up and manage properly the released material as described in R315-15-9.3; and

(4) If necessary, repair or replace any leaking used oil tanks, containers, and ancillary equipment prior to returning them to service.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.

(c) Provide the following information when reporting the release:

(1) Name, phone number, and address of person responsible for the release.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of release.

(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.

(5) Description contained on the manifest and the amount of material released.

(6) Cause of release.

(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.

(8) The extent of injuries, if any.

(d) An air, rail, highway, or water transporter who has discharged used oil shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, http://nrc.uscg.mil/nrchp.html, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

9.2 EMERGENCY CONTROL VARIANCE

If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Director, a variance to the used oil transporter permit and used oil handler certificate requirement and the US EPA identification number requirement for used oil transporters may be granted by the Director until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Director.

9.3 RELEASE CLEAN-UP

The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Director so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The Director may require releases to be cleaned up to standards found in US EPA Regional Screening Levels. The cleanup or other required actions shall be at the expense of the person responsible for the release.

9.4 REPORTING

Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Director a written report that contains the following information:

(a) The person's name, address, and telephone number;

(b) Date, time, location, and nature of the incident;

(c) Name and quantity of material(s) involved;

(d) The extent of injuries, if any;

(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

R315-15-10. Financial Requirements.

(a) Used oil activities. An owner or operator of an off-specification burner facility, transportation facility, processing/re-refining facility, or transfer facility, or a group of such facilities, is financially responsible for:

(1) cleanup and closure costs;

(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability; and

(3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases.

(i)(A) The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Director of its ability to meet these financial requirements.

(B) The owner or operator shall present with its permit application the information the Director requires to demonstrate its general comprehensive liability coverage.

(C) The owner or operator shall use the financial mechanisms described in R315-15-12 to demonstrate its ability to meet the financial requirements of R315-15-10(a)(1) and (a)(3).

(ii) In approving the financial mechanisms used to satisfy the financial requirements, the Director will take into account existing financial mechanisms already in place by the facility if required by R315-7-15, R315-8-8, and R311-201-6. Additionally, the Director will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment.

(iii) Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Director as part of the permit application and approval process and shall be maintained until released by Director.

(iv) Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Director.

(b)(1) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden and non-sudden accidental releases of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Director as provided for in R315-15-10.

(2) Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Director. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(i) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs; and

(ii) For operations in whole or part that do not qualify under R315-15-10(b)(1), coverage shall be in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, and $3 million per occurrence for non-sudden releases, with an annual aggregate coverage of $6 million, exclusive of legal defense costs;

(iii) For operations covered under R315-15-10(b)(2), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of $4 million per occurrence, with an annual aggregate coverage of $8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Director as provided for R315-15-10. The minimum amount of the coverage for used oil transporters shall be $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Director.

(d) An owner or operator responsible for cleanup and closure under R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the

Director through the use of an acceptable financial assurance mechanism indicated under R315-15-12.

(e) Used Oil Collection Centers. Except for DIYers, who are subject to Utah Code Annotated 19-6-718, an owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under R315-15-10(a) and (b) unless these requirements are waived by the Director. In accordance with Utah Code Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Director shall waive an owner or operator from its existing financial responsibility mechanism as described in R315-15-10 when:

(1) The Director approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to R315-15-11; or

(3) The Director determines that financial responsibility is no longer applicable under R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-10.

R315-15-11. Cleanup and Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of R315-15-11 or supplies evidence acceptable to the Director demonstrating a closure mechanism meeting the requirements of R315-7-15 and R315-8-8.

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary. The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Director that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

11.2 CLEANUP AND CLOSURE PLAN

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Director for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Director.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Director.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in 40 CFR 264.145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations that will be cleaned, closed, or both during the active life of the facility.

(iii) The highest cost estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Director, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under

R315-15-10. Within 30 days of the Director's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Director:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Director that closure has been initiated:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) Within 90 days after the Director revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Director determines that the owner or operator has failed to comply with R315-15, the Director may, after 30 days following written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of R315-15-10.

11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the Director, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Director shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and R315-15.

R315-15-12. Financial Assurance.

12.1 DEFINITIONS

For the purposes of R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Director in accordance with R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with R315-15-13 from the Director after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Utah Code Annotated 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under R315-15-10 sufficient to assure cleanup and closure of the facility in conformance with R315-15-11.1 with one or more of the financial assurance mechanisms of R315-15-12.3 prior to receiving a permit from the Director.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Director, above the storage or processing capacity identified in the permit application approved by the Director, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Director as identified in R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the Director;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Director; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Director 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Director for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity that has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Director.

(iii) For trust funds that are fully funded at the time of permit approval, an annual trust valuation shall be certified and submitted to the Director. The permittee shall provide evidence annually, upon the anniversary of the trust agreement, that the trust remains fully funded.

(iv) For trust funds not fully funded at the time of permit approval by the Director, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Director's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund and reported in accordance with the approved trust agreement, and

(D) no later than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Director that the trust fund has been fully funded according to the current permitted cleanup and closure cost estimate.

(E) The facility shall submit an annual valuation of the trust to the Director on or before the anniversary date of the trust.

(v) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Director.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director in writing prior to the trustee granting reimbursement.

(viii) The Director may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Director as identified in R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective before the initial receipt of used oil.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Director that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Director as identified in R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Director a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Director 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Director for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Director found in R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective before the initial receipt of used oil

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the language incorporated by reference in R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Director.

(vi) The letter of credit shall follow the wording provided by the Director as identified in R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective before the initial receipt of used oil.

(C) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Director.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Director, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Director.

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the Director when the Director notifies the Insurer that the Director is making a claim, as provided for in R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within 30 days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of R315-15-12.3(b)(1), except for R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Director incorporated by reference in R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under R315-15-11.2.

(vi) An owner or operator, or other person authorized by the Director, may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Director, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in R315-15-12.

(xii) Whenever requested by the Director, the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Director for those facilities that are located in Utah.

(xv) All policy provisions related to R315-15 shall be construed in accordance with the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Director before said endorsement(s) become effective.

(xvii) Neither the Insurer nor the Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Director at the time the Director first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of R315-15-12.3(b)(1), except for item R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Director.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Director.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in R315-15-12.3(c)(3).

(3) The owner or operator shall demonstrate compliance with R315-15-10(b) or (c) by using one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Director identified in R315-15-17.10.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Director may adjust the level of financial responsibility required under R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Director's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Director may require that an owner or operator of the used oil facility or operation comply with R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Director when requested in writing, any information the Director requests to determine whether cause exists for an adjustment to the financial responsibility under R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Director revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in R315-15-10(d) has changed, it may submit a written request to the Director to modify its permit to reflect the changed responsibility.

(f) The Director may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Director to modify its permit to change its financial assurance mechanism or mechanisms as described in R315-15-12.

(h) The Director may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Director.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Director by certified mail within ten days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

(i) bankruptcy of the trustee or issuing institution; or

(ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or

(iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by R315-15-10, 11, and 12 and submitted to the Director with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the Director by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

(i) policy number or other mechanism control number,

(ii) effective date of policy or other mechanism, and

(iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

(i) policy number,

(ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and

(iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and R315-15-10, 11, and 12, shall be provided upon request by the Director.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS TYPES A AND B

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) Type A or B used oil collection center without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) the type of storage and secondary containment to be used;

(4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean-up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS TYPES C AND D

(a) Applicability. A person may not operate a generator used oil collection center Type C or D without holding a registration number issued by the Director.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) whether the center will accept DIYer used oil;

(4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. In accordance with Utah Code

Annotated 19-6-710, the Director may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA-approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Director if that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Director as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Director as a generator collection center and comply with the standards in R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by R315-15-13.4(f), a person may not operate as a used oil transporter without holding a used oil transporter permit issued by the Director. A person shall not operate a used oil transfer facility without holding a used oil transfer facility permit specific to that facility, issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification and how the transporter will comply with the rebuttable requirements of R315-15-4.5;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be carried in vehicles used to transport used oil and spill containment equipment maintained at the used oil transfer facility, and how the transporter shall comply with the requirements of R315-15-9;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) A closure plan meeting the requirements of R315-15-11;

(13) Proof of applicant's ownership of any property and facility used for storage of used oil or, if the property and facility is not owned by the applicant, the owners' written statement acknowledging the activities specified in the application;

(14) For transfer facility permit applications, tank certification in accordance with R315-8-10 for used oil storage tanks at the transfer facility;

(15) For transfer facility permit applications, a facility piping and instrument drawing certified by a Professional Engineer;

(16) If rail transport is part of the application, a loading/off-loading plan for rail tanker cars used to transport used oil. This plan shall include detailed procedures to be followed to minimize the potential for releases and on-site accidents. At a minimum, the following items shall be addressed:

(i) Personal safety equipment;

(ii) Coordination with railroad to ensure exclusive rights to the loading track during the entire period of loading/offloading;

(iii) A minimum number and qualification of workers involved in the loading or off-loading operations;

(iv) Braking and blocking of rail car wheels;

(v) Procedures for Depressurizing tank car prior to opening manhole covers and outlet valves;

(vi) The sequence of valve openings and closings on any hosing or piping involved in the loading or off-loading process,

(vii) A description of how and where pipe and hose fitting will be attached, including a description of which rail car valves/openings will be used;

(viii) Use of catchment container to collect any used oil released from hoses, valves, and pipes during and following the loading/offloading operation;

(ix) Measures to insure ignition sources are not present;

(x) Procedures for cleanup of any spills that occur during the loading/offloading operations; and

(xi) Other site-specific requirements required by the Director to protect human health and the environment.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each transporter and transfer facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters and transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state to which used oil is transferred, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Transporter and Transfer Facility Permit by rule. Notwithstanding any other provisions of R315-15-13.4, a used oil generator who self-transports used oil generated by that generator at a non-contiguous operation to a central collection facility in the generator's own service vehicles in quantities exceeding 55 gallons shall be deemed to have an approved used oil transporter permit or used oil transfer facility permits, or both if the generator meets all applicable requirements of R315-15-13.4(f)(1) through (4).

(1) All used oil transporters or transfer facilities who qualify for a permit by rule shall submit a notification to the Director of their intent to operate under R315-15-13.4(f) and comply with the following conditions:

(i) The generator's facility is defined under the North American Industry Classification System (NAICS), published, in 2007, by the US Economic Classification Policy Committee, with a NAICS code of 21 (Mining), 23 (Construction), or 541360 (Geophysical Surveying and Mapping Services);

(ii) The generator self-transports and delivers the used oil to facilities that the generator owns, operates, or both.

(iii) The generator notifies the Director with the information required by R315-15-13.4(b)(1) through (10); and

(iv) The generator complies with R315-15-4.3, R315-15-4.4(b) through (d), R315-15-4.6(b) through (f), R315-15-4.7(b) and (d), and R315-15-4.8.

(2) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1)and who burns all the collected used oil for energy recovery is deemed to be approved by rule to operate as a used oil transporter for that activity if the following additional conditions are met:

(i) The generator only burns the self-collected used oil for energy recovery at that generator's own central collection facility.

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7.

(3) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1) and only stores the used oil for subsequent collection by permitted used oil transporters is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The generator arranges for permitted used oil transporters to collect the generator's used oil.

(ii) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(4) A generator who self-transports used oil in accordance with R315-15-13.4(f)(1), and who both burns their collected used oil for energy recovery and arranges for permitted use oil transporters to collect that used oil, is deemed to be approved by rule to operate as a used oil transporter and transfer facility for that activity if the following additional conditions are met:

(i) The self-transported used oil burned for energy recovery is only burned at the generator's central collection facility;

(ii) The generator registers as a used oil fuel marketer in accordance with R315-15-13.7 and complies with R315-15-7; and

(iii) The generator arranges for permitted used oil transporters to collect the generator's used oil not burned on site.

(iv) The self-transported used oil is not stored at the generator's facility longer than 35 days. If the self-transported used oil is stored longer than 35 days, the generator becomes a used

oil processor in accordance with R315-15-4.6(a) and shall obtain a used oil processor permit in accordance with R315-15-13.5.

(g) All used oil transporters and transfer facilities shall obtain and maintain a used oil handler certificates in accordance with R315-15-13.8.

13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil processing/re-refining facility without holding a permit issued by the Director.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan, including a list of spill containment equipment to be maintained at the used oil processor facility;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil;

(12) Any other information the Director finds necessary to ensure the safe handling of used oil;

(13) A closure plan meeting the requirements of R315-15-11.

(14) A contingency plan meeting the requirements of R315-15-5.3(b);

(15) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(16) Tank certification in accordance with R315-8-10 for used oil storage tanks at the processor facility; and

(17) A facility piping and instrument drawing certified by a Professional Engineer.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Department fee schedule 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Director of its activities during the calendar year. The annual report shall be submitted to the Director no later than March 1 of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Used oil processors and re-refiners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.6 USED OIL BURNERS

(a) On-specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Director for the purpose of R315-15-13.6, if they hold a valid air quality operating order or are exempt under R315-15-2.4.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Director.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) The name and address of the operator;

(ii) The location of the facility;

(iii) The type of containment and type and capacity of storage;

(iv) The type of burner to be used;

(v) The methods of disposing of any waste by-products;

(vi) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) An emergency spill containment plan; including a list of spill containment equipment to be maintained at the used oil processor facility.

(viii) Proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) Proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of R315-15-11;

(xi) Proof of applicant's ownership of the property and facility or, if the property and facility is not owned by the applicant, the owner's written statement acknowledging the activities specified in the application;

(xii) Tank certification in accordance with R315-8-10 for used oil storage tanks at the processor facility; and

(xiii) A facility piping and instrument drawing certified by a Professional Engineer.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of permit approvals and annual used oil handler certificates.

(4) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Permits by rule. Any facility permitted by rule is not required to obtain a permit as required by R315-15-13.6(b)(1), but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment. A permit by rule is conditional upon continued compliance with the requirements of R315-15-13.6(b), as determined by the Director. Notwithstanding any other provisions of R315-15-13.6, a hazardous waste incinerator facility that has been issued a final permit under R315-3-1, and that implements the requirements of R315-8-15, shall be deemed to have an approved off-specification used oil burner permit if that facility meets all of the following conditions:

(i) It burns off-specification used oil only in devices specified in R315-15-6.2(a);

(ii) It stores used oil in the manner described in R315-15-6.5;

(iii) It tracks off-specification used oil shipments as described in R315-15-6.6;

(iv) It complies with R315-15-6.3 and R315-15-6.7;

(v) It modifies its closure plan required under R315-8-7 (Closure and Post Closure), to include used oil storage and burning devices, taking into account any used oil activities at this facility;

(vi) It modifies its financial mechanism or mechanisms required under R315-8-8 (Financial Requirements), using a mechanism other than a corporate financial test/corporate written guarantee, to reflect the used oil activities at the facility; and

(vii) It submits to the Director the information required by R315-15-13.6(b)(2)(i) through (vi), and a one-time declaration that the facility intends to burn off-specification used oil.

(6) Annual Reporting. Each off-specification used oil burner, including those permitted by rule under R315-15-13.6(b)(5), shall submit an annual report to the Director of their activities during the calendar year. The annual report shall be submitted to the Director no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Director or shall contain the following information:

(i) The EPA identification number, name, and address of the burner facility;

(ii) The calendar year covered by the report; and

(iii) The total amount of used oil burned.

(c) Off-specification used oil burners shall obtain and maintain a current used oil handler certificate in accordance with R315-15-13.8.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in R315-15-7, without holding a registration number issued by the Director.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) The status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Sampling and Analysis Plan. Marketers shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of R315-15, including the applicable portions of R315-15-1.2, R315-15-5.4, R315-15-7.3, and R315-15-18. The owner or operator shall keep the plan at the facility. The plan shall address at a minimum the following:

(i) Specification used oil fuel. The analysis plan shall describe how the marketer will comply with R315-15-1.2, R315-15-5.6, and R315-15-7.3, as applicable.

(ii) Analytical methods. The plan shall specify the preparation and analytical methods for each parameter.

(iii) PCBs. The analysis plan shall describe how the marketer will comply with R315-15-18.

(iv) Generator knowledge. The plan shall describe the requirements for generator knowledge, if applicable.

(v) Sample Quality Control. The plan shall specify the quality control parameters and acceptance limits.

(vi) Rebuttable presumption for used oil. The analysis plan shall describe how the marketer will comply with R315-15-1.1(b)(ii) and R315-15-5.4, if applicable.

(vii) Sampling. The analysis plan shall describe the sampling protocol used to obtain representative samples, including:

(A) Sampling methods. The marketer shall use one of the sampling methods in R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or a method shown to be equivalent under R315-2-15.

(B) Sample frequency. The plan shall specify the frequency of sampling to be performed, and whether the analysis will be performed on site or off site.

(c) Registration fees. Registration and permitting fees are established under the terms and conditions of Utah Code Annotated 63J-1-504. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and annual used oil handler certificates.

(d) A person who acts as used oil fuel marketer shall annually obtain a used oil handler certificate in accordance with R315-15-13.8. A used oil fuel marketer shall not operate without a used oil handler certificate.

(e) Changes in information. The owner or operator of the facility shall notify the Director in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

13.8 USED OIL HANDLER CERTIFICATES

(a) Applicability. As well as obtaining permits and registration described in R315-15-13.4 through 13.7, a person shall not act as a used oil transporter, operator of a transfer facility, processor/re-refiner, off-specification burner, or marketer without applying for, receiving, and maintaining a current used oil handler certificate issued by the Director for each applicable activity. Each used oil permit and marketer registration described in R315-15-13.4 through 13.7 above requires a separate used oil handler certificate.

(b) General. Each application for a used oil handler certificate shall include the following information:

(1) business name;

(2) address to include:

(i) mailing address; and

(ii) site address if different from mailing address

(3) telephone number

(4) name of business owner;

(5) name of business operator;

(6) permit/registration number; and

(7) type of permit/registration number (i.e., processor, transporter, transfer facility, off-specification burner, or marketer).

(c) Changes in information. A used oil handler certificate holder shall notify the Director of any changes in the information provided in Subsection R315-15-13.8(b) within 20 days of implementation of the change.

(d) A used oil handler certificate will be issued to an applicant following the:

(1) completion and approval of the application required by R315-15-13.8(a); and

(2) payment of the fee required by the Annual Appropriations Act.

(e) A used oil handler certificate is not transferable and shall be valid January 1 through December 31 of the year issued. The certificate shall become void if the permit or registration associated with the used oil activity described in the certificate, in accordance with R315-15-13.8(b)(6) in the application, is revoked under R315-15-15.2 or if the Director, upon the written request of the permittee or registration holder, cancels the certificate.

(f) The certificate registration fee shall be paid prior to operation within any calendar year.

R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Director shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Director for each gallon of used oil collected from DIYer used oil generators, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, registered marketer or burned in accordance with R315-15-2.4(b).

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to $0.16 per gallon, subject to availability of funds and the priorities of Utah Code Annotated 19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts of DIYer and farmer, as defined in R315-15-2.1(a)(4), used oil collected during the quarter for which the reimbursement is requested. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the Director within 30 days following the report filing period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

(d) Any reimbursement requests outside the timeframe outlined in R315-15-14.2(a) will not be granted unless approved by the Director.

R315-15-15. Issuance, Renewal, and Revocation of Permits and Registrations.

15.1 PUBLIC COMMENTS AND HEARING.

(a) The Director shall:

(1) determine if the permit application or modification request is complete and meets all requirements of R315-15-13;

(2) publish notice of the proposed permit in a newspaper of general circulation in the state and also in a newspaper of general circulation in the county in which the proposed permitted facility is located;

(3) provide a 15-day public comment period from the date of publication to allow the public time to submit written comments;

(4) consider submitted public comments received within the comment period; and

(5) send a written decision to the applicant and to persons submitting comments,

(b) The Director's decision under R315-15-15.1(a) may be appealed in accordance with Utah Administrative Code R305-7.

(c) Duration of Permits. Used oil permits shall be effective for a fixed term not to exceed ten years. Any Permittee holding a permit issued on or before January 1, 2005 who wants to continue operating shall submit an application for a new permit not later than 180 days after January 1, 2015. The term of a permit shall not be extended by modification to the permit.

(d) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under R315-15-13, at least 180 days prior to the expiration date of the current permit. The permit application shall contain all the materials required by R315-15-13.

(2) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(e) Effect. Permits continued under this section remain fully effective and enforceable.

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following;

(1) Initiate enforcement action based upon the permit that has been continued;

(2) Issue a notice of intent to deny the new permit under R315-15-15.2. If the permit is denied, the owner or operator is required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under R315-15-15.2 with appropriate conditions;

(4) Take other actions authorized by these rules

(g) Five-Year Review of Permit. Each used oil permit, including the costs of closure and post closure care issued under R315-15-13, shall be reviewed by the Director five years after the permit's issuance, or when the Director determines that a permit requires review and modification.

15.2 MODIFICATION AND REVOCATION OF PERMITS, REGISTRATIONS AND HANDLER CERTIFICATES.

(a) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statues or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. The permit modification requests shall not be implemented until approval of the Director.

Violation of any permit or registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including denial of an application for permit, registration, or used oil handler certificate.

(b) Request for agency action. The owner or operator of a facility may contest an order associated with modification, renewal, or termination in accordance with Utah Administrative Code R305-7.

R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

Utah Code Annotated 19-6-720 authorizes the Division of Solid and Hazardous Waste to award grants, as funds are available, for the following:

(a) Used oil collection centers; and

(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Package, published by the Director, shall be completed and submitted to the Director for consideration.

16.3 LIMITATIONS.

(a) The grantee must commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

R315-15-17. Wording of Financial Assurance Mechanisms.

17.1 APPLICABILITY

R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Solid and Hazardous Waste located at 195 North 1950 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, http://www.hazardouswaste.utah.gov/.

(a) The Division requires that the forms described in R315-15-17.2 through R315-15-17.14 shall be used for all financial assurance filings and shall be signed in duplicate original documents. The wording of the forms shall be identical to the wording specified in R315-15-17.2 through R315-15-17.4.

(b) The Director may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Director.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form approved by the Director.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form approved by the Director.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form approved by the Director.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form approved by the Director.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form approved by the Director.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form approved by the Director.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form approved by the Director.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form approved by the Director.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

17.14 STANDBY TRUST AGREEMENT,OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form approved by the Director.

R315-15-18. Polychlorinated Biphenyls (PCBs).

(a) Used oil containing polychlorinated biphenyl (PCB) concentrations of 50 ppm and above is subject to TSCA regulations in 40 CFR 761. Used oil containing PCB concentrations greater than or equal to 2 ppm but less than 50 ppm is subject to both R315-15 and 40 CFR 761.

(b) Used oil transporter PCB testing. Used oil transporters shall determine the PCB content of used oil being transported is less than 50 ppm prior to transferring the oil into the transporter's vehicles. The transporter shall make this determination as follows:

(1) Used dielectric oil. Dielectric oil used in transformers and other high voltage devices shall be certified to be less than 50 ppm prior to loading to the transporter's vehicle through laboratory testing following the procedures described in R315-15-18(d).

(2) Other used oils shall be certified to be less than 50 ppm prior to transfer through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 50 ppm based on manufacturing specifications and process knowledge.

(c) Used oil marketer PCB testing. To ensure that used oil destined to be burned for energy recovery is not a regulated waste under the TSCA regulations, used oil fuel marketers shall determine whether the PCB content of used oil being burned for energy recovery is below 2 ppm. A marketer shall make this determination in a manner consistent with the used oil marketer's sampling and analysis plan.

(d) Laboratory testing for PCBs. Used oil testing for total PCBs shall include the following Aroclors: 1016, 1221, 1232, 1242, 1248, 1254, and 1260. If plasticizers (used in polyvinyl chloride plastic, neoprene, chlorinated rubbers, laminating adhesives, sealants and caulk and joint compounds etc.) are present, then the used oil shall also be analyzed for Aroclors 1262 and 1268. If other Aroclors are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors.

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used for PCBs:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors shall be reported with a reporting limit of 1 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor, and the Aroclor is unlikely to be significantly altered in homologue composition such as weathering, Aroclors listed in R315-15-18(d) shall be reported. Analytical results from all 209 individual congeners or ten homologue groups shall be submitted for any sample that has an altered homologue composition such as weathering unless prior approval is obtained from the Director.

KEY: hazardous waste, used oil
Date of Enactment or Last Substantive Amendment: November 12, 2015
Notice of Continuation: May 17, 2012
Authorizing, and Implemented or Interpreted Law: 19-6-704

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 157237
Utah Admin. Code ref. (R no.): R315-17

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

Room no.: Second Floor
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Street address 2:
City, state, zip: SALT LAKE CITY UT 84116-3097
Mailing address 1: PO BOX 144880
Mailing address 2:
City, state, zip: SALT LAKE CITY UT 84114-4880

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
End of Life Automotive Mercury Switch Removal Standards

Rule Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:
The Board is instructed in Statute (19-6-1003) to board shall make rules: (a) governing administrative proceedings under this part (part 10); (b) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review a plan submitted by a manufacturer; and (c) governing reports and educational materials required by this part.

Comment Summary

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:
Rule was modified once since the last 5 year review. No comments were received

Justification Information

5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:
The rule is required by statute (19-6-1003) and sets the standards and reports that are required for a mercury switch removal program in Utah. The rule also makes possible reimbursement for mercury switches removed.

Indexing Information

6. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous waste

File Information

7. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency Authorization

Agency head or designee, and title: Scott Anderson
Director
Date (mm/dd/yyyy): 02/08/2016

R315. Environmental Quality, Solid and Hazardous Waste.
R315-17. End of Life Automotive Mercury Switch Removal Standards.
R315-17-1. Purpose.

(a) The purpose of this rule is to provide for the administration of the Mercury Switch Removal Act, Utah Code Annotated 19-6-1001, et seq.

(b) The Mercury Switch Removal Act and this Rule require the removal of mercury switches from vehicles that have reached the end of their useful life.

R315-17-2. Applicability.

This rule applies to:

(a) manufacturers of vehicles sold in the State of Utah;

(b) vehicles that may contain one or more mercury switches;

(c) mercury switches; and

(d) persons removing mercury switches from vehicles.

R315-17-3. Definitions.

Terms used in this rule are defined in Utah Code Annotated 19-6-1002.

R315-17-4. Mercury Switch Collection Plan.

(a) Manufacturers of any vehicle sold within the State of Utah shall submit a plan individually or in cooperation with other manufacturers to the Director for review and approval by January 15, 2007. This submission shall be accompanied by a filing fee as established by the legislature in the Department of Environmental Quality fee schedule. The Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(b) The Director shall review and approve or disapprove the submitted plan based on the requirements outlined in R315-7-17-4(d). If the plan is not approved, the Director shall provide comments to the manufacturer within 60 days of submission of the plan. The manufacturer shall address all comments from the Director and submit an amended plan within 90 days after the Director provides comments on the unapproved plan.

(c) A manufacturer shall ensure that plan implementation occurs by July 1, 2007.

(d) The mercury switch collection plan shall include:

(1) The make, model, and year of any vehicle, including current and anticipated future production models, sold by a manufacturer that may contain one or more mercury switches;

(2) The description and location of each mercury switch for each make, model, and year of vehicle;

(3) Procedures for the prompt reimbursement by a manufacturer of costs incurred by a person removing and collecting mercury switches without regard to the date on which the mercury switch is removed and collected;

(4) Information addressing safe and environmentally sound methods for mercury switch removal and information about hazards related to mercury and the proper handling of mercury;

(5) Methods for the storage and disposal of mercury switches, including packaging and shipping of mercury switches to an authorized recycling, storage, or disposal facility; and

(6) Procedures for the transfer of information among persons involved with the plan to comply with reporting requirements.

(e) If a manufacturer does not know or is uncertain about whether or not a switch contains mercury, the plan shall presume that the switch contains mercury.

R315-17-5. Mercury Switch Removal Costs.

(a) Manufacturers shall implement procedures for the prompt reimbursement of costs incurred by a person removing and collecting mercury switches without regard to the date on which the mercury switch is removed and collected.

(b) To ensure that the costs of removal and collection of mercury switches are not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

(1) A minimum of $5 for each mercury switch removed by a person as partial compensation for the labor and other costs incurred in removing the mercury switch;

(2) The cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities;

(3) The cost of shipping mercury switches to recycling, storage, or disposal facilities;

(4) The cost of recycling, storage, or disposal of mercury switches;

(5) The cost of the preparation and distribution of educational materials; and

(6) The cost of maintaining all appropriate record keeping systems.

R315-17-6. Public Participation.

The Director shall also provide public notice, a public comment period, and public hearing(s) for each proposed Mercury Switch Collection Plan in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

R315-17-7. Plan Amendments.

The Director may require a manufacturer to modify the plan at any time upon finding that an approved plan as implemented has failed to meet the requirements of this rule.

R315-17-8. Reporting Requirements.

(a) Each manufacturer that is required to implement a mercury switch collection plan shall submit, either individually or in cooperation with other manufacturers, an annual report on the plan's implementation to the Director by October 1 of each year, beginning in 2008.

(b) The annual report shall include:

(1) The number of mercury switches collected;

(2) The number of mercury switches for which the manufacturer has provided reimbursement;

(3) A description of the successes and failures of the plan;

(4) A discussion of how the failures of the plan have been or will be corrected; and

(5) A statement detailing the costs required to implement the plan.

R315-17-9. Penalties.

In accordance with 19-6-1006, a manufacturer who fails to submit, modify, or implement a plan according to R315 may be subject to a civil penalty of not more than $1,000 per day per violation.

R315-17-10. Administrative Proceedings.

Administrative proceedings under the Mercury Switch Removal Act and this Rule shall be conducted in accordance with R315-12.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: April 25, 2013
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 9-6-1003

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 157238
Utah Admin. Code ref. (R no.): R315-101

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

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Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Cleanup Action and Risk-Based Closure Standards

Rule Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:
The statute allows the Waste Management and Radiation Control Board to make rules instructing property owners to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility.

Comment Summary

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:
The rule has been modified once since that last five year review and no comments were received.

Justification Information

5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:
The rule is needed to give direction to persons that want to remove contamination for the soil at a site and to give the standards that must be met to allow specific uses of the property.

Indexing Information

6. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous waste

File Information

7. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Section 63G-3-305. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

Agency Authorization

Agency head or designee, and title: Scott Anderson
Director
Date (mm/dd/yyyy): 02/08/2016

R315. Environmental Quality, Solid and Hazardous Waste.
R315-101. Cleanup Action and Risk-Based Closure Standards.
R315-101-1. Purpose, Applicability.

(a) Purpose. R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. The procedures in this rule also provide for continued management of sites for which minimal risk-based standards cannot be met.

(b) Applicability.

(1) R315-101 is applicable to any responsible party involved in management of a site contaminated with hazardous waste or hazardous constituents. This rule does not apply to a site that has been or will be cleaned to background.

(2) In the event of a release of hazardous waste or material which, when released, becomes hazardous waste, these requirements apply if the responsible party fails to clean up all the released material and any residue or contaminated soil, water or other material resulting from the release as required by R315-9-3. If the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the requirements of R315-9-3 shall be considered met.

(3) The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of R315-7-14 and R315-8-7 prior to implementation of any activities described in R315-101. The requirements of R315-3-1.1(e)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Director for review.

(4) If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Director determines that ecological effects may be significant, then a risk-based closure will not be granted and appropriate management will be required and may include corrective action, post-closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:

(a) The impact or potential impact of the contamination on the human health;
(b) The impact or potential impact of the contamination on the environment;
(c) The technologies available for use in clean-up; and
(d) Economic considerations and cost-effectiveness of clean-up options.

R315-101-2. Stabilization.

The responsible party must immediately take appropriate action to stabilize the site either through source removal or source control. After the responsible party has attempted to complete the requirements of R315-9 and the Director determines that additional work is needed to stabilize the site, the Director will notify the responsible party that additional work is necessary and provide the responsible party with objectives to be addressed in developing a work plan to further stabilize the site. The work plan shall be submitted to the Director for review and approval within fifteen days of receiving notification that additional work will be necessary to complete the emergency actions required by R315-9. Work plans shall be of a scope commensurate with the work to be performed and site-specific characteristics. This work plan shall include a description of the interim measure and how it will meet the criteria of source removal or source control. The implementation of the work plan shall be according to the

schedule contained within the approved plan. All interim measures shall be at the expense of the party responsible for the site. If the party responsible for the site fails to take the measures required for stabilizing the site, the Director may request the Executive Director of the Department to take abatement and cost recovery actions as provided in Section 19-6-301, et seq., Utah Hazardous Substances Mitigation Act.

R315-101-3. Principle of Non-degradation.

When closing or managing a contaminated site, the responsible party shall not allow levels of contamination in groundwater, surface water, soils, and air to increase beyond the existing levels of contamination at a site when site management commences. The responsible party will demonstrate compliance with this policy by submitting appropriate monitoring data or other data as may be required by the Director. If at any time the level of contamination increases, the responsible party shall take immediate corrective action to prevent further degradation of any medium.

R315-101-4. Site Characterization.

The following information shall be collected to characterize the site, and define site boundaries and Area(s) of Contamination:

(a) A legal description of the site;

(b) Historical land use and ownership of the site;

(c) Topographical map(s) of sufficient detail, scale, and accuracy to depict and locate all past and current physical structures including all building(s) and waste activities at the site;

(d) Information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, and hydrogeological conditions;

(e) An inventory of all current and past wastestreams managed at the site, including process descriptions and suspected contamination source information;

(f) Background levels of suspected hazardous constituents based on the inventory as determined in R315-101-4(e) in media of concern, e.g. sediments, soil, groundwater, surface water, and air which are representative of the site; and

(g) Location and boundaries of all Area(s) of Contamination, including concentrations, types and extent of hazardous constituents. Media to be sampled may include sediments, soil, groundwater, surface water, and air, as applicable.

R315-101-5. Health Evaluation Criteria, Risk Assessment.

5.1 REQUIRED STUDY

(a) When conducting the risk assessment the responsible party will use all applicable site characterization data and shall consider the following parameters when conducting the risk assessment:

(1) Identification, concentration, and distribution of all suspected hazardous constituents identified in R315-101-4(e);

(2) All area(s) of contamination at the site;

(3) Fate of contaminants and pathways of contaminant transport; and

(4) Potentially exposed populations.

5.2 CHARACTERIZATION AND EVALUATION OF RISK

(a) The responsible party shall conduct a risk assessment which includes the following:

(1) The concentration term "C" for each medium for each hazardous constituent identified in R315-101-5.1(a)(1);

(2) Evaluation of the fate of contaminants and of all pathways of contaminant transport identified in R315-101-5.1(a)(3);

(3) Exposure assessment identifying the RME for all exposure pathways, intakes, and identified constituents;

(4) Current toxicity information for carcinogenic and noncarcinogenic effects;

(5) Risk characterization identifying carcinogenic risk, individual and multiple substances, and noncarcinogenic hazardous index, individual and multiple substances;

(6) An ecological evaluation which provides for terrestrial and aquatic processes; and

(7) Current toxicity information for all the constituents and biological processes relevant to the ecological evaluation.

(b) The risk assessment shall be conducted using one or both of the standard exposure scenarios listed below, as needed to determine site management options:

(1) Residential. This exposure scenario includes ingestion of water (must include surface water and ground water regardless of water quality), ingestion of soil and dust, ingestion of contaminated and potentially contaminated food, inhalation of contaminants, dermal contact with chemicals in soil, and dermal contact with chemicals in water for a human being ages zero through 70 years old using the equations and default variable values found in the Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual Supplemental Guidance, "Standard Default Exposure Factors", Interim Final, OSWER Directive 9285.6-03, March 25, 1991 or most recent edition;

(2) Actual land use conditions or potential land use conditions based upon applicable zoning and future land use planning considerations, if potential land use conditions offer a more protective exposure scenario than actual land use conditions. This exposure scenario involves an assessment based on actual site conditions using standard default variable values. The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site-specific physical and chemical information, and the assumption that contaminated media will not have undergone any remedial engineering.

5.3 DATA PRESENTATION

(a) A risk assessment report shall be submitted to the Director and must include at a minimum the following:

(1) An executive summary;

(2) An overview of the site and the areas of contamination;

(3) A site characterization report which includes:

(i) Maps of sufficient detail and accuracy to depict areas of contamination, topography, geology, and groundwater contours or potentiometric surface;

(ii) Site and regional geological and hydrological descriptions;

(iii) A detailed discussion of areas of contamination;

(iv) Background levels of hazardous constituents including details of statistical methods used to determine background; and

(v) Descriptions of releases of hazardous constituents and expected extent of migration from the area of contamination.

(4) Identification and concentration of hazardous constituents identified in R315-101-5.1(a)(1). A sampling and analysis plan shall be prepared and utilized for the collection of all data. This plan shall be developed using procedures and methods outlined in R315-50-6 and the most current version of "SW-846, Test Methods for Evaluating Solid Waste." It shall contain a summary outlining data quality objectives, completed analytical request forms for all analysis performed, dry weight equivalents, sampling location identification and justification, standard operating procedures used for data collection, all statistical analysis performed, quality assurance and quality control plans (QA/QC plan) and QA/QC results, instrument calibration results, and analytical methods including constituent detection limits;

(5) Exposure assessment identifying exposure levels for all exposure pathways identified in R315-101-5.2(a)(3). If fate and transport models are used, the users manual, model theory, computer software for the model, installation verification data set for the model and parametric analysis of the input parameters must be provided upon request of the Director;

(6) Identification of toxicity information gathered for all identified hazardous constituents for carcinogenic, slope factors and weight-of-evidence classification, noncarcinogenic effects, chronic reference doses (RfDs) and critical effects associated with RfDs from, in order of preference, the Integrated Risk Information System (IRIS), Health Effects Assessment Summary Tables (HEAST), Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles, Environmental Criteria and Assessment Office (ECAO), or other scientifically accepted listings. The source and date of the toxicological information must be identified and be acceptable to the Director;

(7) The risk characterization identifying carcinogenic risk, individual and multiple substances, noncarcinogenic hazardous index, individual and multiple substances, chronic hazard quotient, subchronic hazard quotient, uncertainties, and a tabulation of all risk characterization data presented in a format approved by the Director; and

(8) Unless justification is provided to the Director, and a waiver of this requirement is granted by the Director in writing, an ecological assessment of the site which contains at least the following:

(i) An inventory of the current biological community;

(ii) Estimates of ecological effects based on a subset of ecological endpoints;

(iii) The magnitude and variation of toxic effects; and

(iv) Identification of extent of effects, specifically from the presence of hazardous waste.

(b) If the risk assessment report does not contain all required information of sufficient quality and detail, the Director will notify the responsible party in writing of the deficiencies and require resubmittal of the report in a designated time frame.

(c) If the risk assessment report contains all required information of sufficient quality and detail, the Director will approve the risk assessment report in writing.

R315-101-6. Risk Management: Site Management Plan and Closure Equivalency.

(a) A site management plan which is supported by the findings in the approved risk assessment report shall be submitted to the Director within 60 days of approval of the risk assessment report. This plan may be submitted along with the risk assessment report and must include a schedule for implementation.

(b) The Director shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Director finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Director within an appropriate time frame as specified by the Director. The Director shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Director shall follow the requirements of R315-101-7 prior to issuance of final approval. The approved site management plan shall be implemented according to the approved schedule. If the Director rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Director in a statement of disapproval.

(c)(1) The site management plan may contain a no further action option only if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of R315-3-1.1(e)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance

with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to 1×10^{-6} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.

(d) If the level of risk present at the site is less than 1×10^{-4} for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to 1×10^{-6} for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the site management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post-closure care, as determined on a case-by-case basis in accordance with criteria identified in R315-101-1(b)(4).

(e) The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to 1×10^{-4} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Director concludes that corrective action is required to mitigate ecological effects based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.

(f) If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of R315-8-6.5, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for those constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.

R315-101-7. Public Participation.

(a) The Director may provide for public participation in all phases of the cleanup action process, as defined in R315-101-4 through R315-101-6. As directed by the Director and based on the circumstances and level of public interest at the site, pertinent work plans shall describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example, public meetings, hearings, or comment periods. The Director shall also provide public notice, a public comment period, and public hearing(s) for the site management plan in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

R315-101-8. Cleanup/Management Action.

(a) Upon approval of the site management plan by the Director, all remedial activities at the site shall proceed according to the schedule established in the approved site management plan using the method(s) described therein.

(b) Cleanup/Management Report. The Cleanup/Management Report shall detail remediation, treatment, and monitoring activities undertaken at the site by the responsible party as required by the approved site management plan. If the Cleanup/Management Report provides analytical data as evidence that levels of contamination at the site meet the requirements established in the site management plan for a risk-based closure or no further action as defined in R315-101-6(c)(2), the responsible party shall submit a certification of

completion as outlined in R315-101-8(c), or request risk-based closure as outlined in R315-3-1.1(e)(6), whichever is applicable.

(c) Certification of Completion. Within 60 days of the completion of all activities documented in the Cleanup/Management Report, a Certification of Completion of Cleanup/Management Action shall be submitted to the Director by registered mail. The certification of completion shall state the site has been managed in accordance with the specifications in the approved Site Management Plan and shall be signed by the responsible party and by an independent Utah registered professional engineer.

(d) Oversight.

(1) The Director or his representatives shall have access to the site as described in R315-2-12 and at all times when activity pursuant to R315-101 is taking place. The Director or his representatives may take samples or make records of any visit to the site by photographic, electronic, videotape or any other reasonable means.

(2) The Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Director at least seven days prior to any sampling event or remediation activity.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: April 25, 2013
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 157239
Utah Admin. Code ref. (R no.): R315-102

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

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Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Penalty Policy

Rule Provisions

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:
The rule establishes the criteria the Director will use for proposed penalties that are negotiated with parties that have violated the hazardous waste rules.

Comment Summary

4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:
The rule was modified once during the 5 year review period and no comments were received.

Justification Information

5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:
The rule is necessary to give the Director guidance when negotiation a penalty with a person of facility or permittee. The rule guidance allows the Director to be consistent in assessing penalties.

Indexing Information

6. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
Hazardous waste

File Information

7. Attach an RTF document containing the text of this rule change (filename):
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Agency Authorization

Agency head or designee, and title: Scott Anderson
Director
Date (mm/dd/yyyy): 02/08/2016

R315. Environmental Quality, Solid and Hazardous Waste.
R315-102. Penalty Policy.
R315-102-1. Purpose, Scope, and Applicability.

(a) Subsection 19-6-113(2) of the Utah Solid and Hazardous Waste Act provides that any person who violates any order, plan, rule, or other requirement issued or adopted under the Act is subject in a civil proceeding to a penalty of not more than $13,000 per day for each day of violation. Subsection 19-6-721(1) of the Used Oil Management Act provide that any person who violates any order, plan, rule, or other requirement issued or adopted under the Acts is subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation. Subsection 19-6-104(1)(e) of the Utah Solid and Hazardous Waste Act allows the Director to settle or compromise administrative or civil actions initiated to compel compliance with the Act or rules adopted under the Act.

(b) The following criteria are to be used by the Director for determining amounts which (1) may be sought in settlement of enforcement actions, and which (2) may be accepted in settlement of enforcement actions.

(c) The procedures in R315-102 are intended solely for the guidance of the Director and are not intended, and cannot be relied upon, to create a cause of action against the State.

R315-102-2. Criterion 1: Factors.

The Director shall consider the following factors when calculating a settlement amount:

(a) Economic benefit of noncompliance. These are the costs a person may save by delaying or avoiding compliance with applicable laws or rules.

(b) Gravity of the violation. This component of the calculation shall be based on:

(1) the extent of deviation from the rules, and

(2) the potential for harm to human health and the environment, regardless of the extent of harm that actually occurred.

(c) The number of days of noncompliance.

(d) Good faith efforts to comply or lack of good faith. This takes into account the openness in dealing with the violations, promptness in correction of the problems, and the degree of cooperation with the State to include accessibility to information and the amount of State effort necessary to bring the person into compliance.

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the events constituting the violation, the foreseeability of the events constituting the violation, whether the violator took reasonable precautions to prevent the violation, and whether the violator knew, or should have known, of the hazards associated with the conduct or the legal requirements which were violated.

(f) History of compliance or noncompliance. The settlement amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the settlement amount may be adjusted downward when it is shown that the violator has a good compliance record.

(g) Ability to pay. The settlement amount may be adjusted downward based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Director may accept payment of the settlement under an installment plan, delayed payment schedule, reduced penalty amount, or any combination of these options.

(h) Other unique factors.

R315-102-3. Criterion 2: Calculation of Settlement Amounts.

(a) Violations are grouped into the following categories based on the gravity of the violation:

(1) Major potential for harm, major extent of deviation from the requirement. For used oil, major potential for harm, major extent of deviation from the requirement: $8,000 to $10,000. For hazardous waste or constituents, or solid waste, major potential for harm, major deviation from the requirement: $10,400 to $13,000.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(2) Major potential for harm, moderate extent of deviation from the requirement. For used oil, major potential for harm, moderate deviation from the requirement: $6,000 to $8,000. For hazardous waste or constituents, or solid waste, major potential for harm, moderate deviation from the requirement: $7,800 to $10,400.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(3) Major potential for harm, minor extent of deviation from the requirement. For used oil, major potential for harm, minor deviation from the requirement: $4,400 to $6,000. For hazardous waste or constituents, or solid waste, major potential for harm, minor deviation from the requirement: $5,720 to $7,800.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(4) Moderate potential for harm, major extent of deviation. For used oil, moderate potential for harm, major deviation from the requirement: $3,200 to $4,400. For hazardous waste or constituents, or solid waste, moderate potential for harm, major deviation from the requirement: $4,160 to $5,720.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(5) Moderate potential for harm, moderate extent of deviation from the requirement. For used oil, moderate potential for harm, moderate deviation from the requirement: $2,000 to $3,200. For hazardous waste or constituents, or solid waste, moderate potential for harm, moderate deviation from the requirement: $2,600 to $4,160.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(6) Moderate potential for harm, minor extent of deviation from the requirement. For used oil, moderate potential for harm, minor deviation from the requirement: $1,200 to $2,000. For hazardous waste or constituents, or solid waste, moderate potential for harm, minor deviation from the requirement: $1,560 to $2,600.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(7) Minor potential for harm, major extent of deviation from the requirement. For used oil, minor potential for harm, major deviation for the requirement: $600 to $1,200. For hazardous waste or constituents, or solid waste, minor potential for harm, major deviation from the requirement: $780 to $1,560.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(8) Minor potential for harm, moderate extent of deviation from the requirements. For used oil, minor potential for harm, moderate deviation from the requirement: $200 to $600. For hazardous waste or constituents, or solid waste, minor potential for harm, moderate deviation from the requirement: $260 to $780.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(9) Minor potential for harm, minor extent of deviation from the requirements. For used oil, minor potential for harm, minor deviation from the requirement: $40 to $200. For hazardous waste or constituents, or solid waste, minor potential for harm, minor deviation from the requirement: $50 to $260.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(b) The Director shall have the discretion to determine the appropriate amount within these ranges.

(c) If applicable, a multi-day component may be added to the settlement amount determined in R315-102-3(b). The amount used in a multi-day calculation will typically range from 5% to 20%, with a minimum of $40 per day for used oil, and with a minimum of $50 per day for hazardous waste or constituents, or solid waste, of the amount determined in R315-102-3(b) for each day of violation up to 179 days following the first day of violation. However, discretion is retained to consider amounts (1) of up to $10,000 per day of violation for used oil

and up to $13,000 per day of violation for hazardous waste or constituents, or solid waste and (2) for days of violation after the first 179 days following the first day of violation.

(d) The amount calculated above may be adjusted by taking into account the factors specified in R315-102-2(d) through (h).

(e) This amount will then be added to any economic benefit gained by the person as specified in R315-102-2(a).

(f) If applicable, partial credit may be given for an approved supplemental environmental project.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: April 25, 2013
Notice of Continuation: November 18, 2014
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

UTAH WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Final Adoption of Amendments to Rules R313-15, R313-19, and R313-24
March 10, 2016

What is the issue before the Board?	Final adoption of the proposed rule changes to R313-15, *Standards for Protection of Radiation*, R313-19, *Requirements of General Applicability to Licensing of Radioactive Material*, and R313-24, *Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements*. The proposed rule changes follow this Executive Summary.
What is the historical background or context for this issue?	On December 10, 2015, the Board approved filing with the Division of Administrative Rules for publication in the *Utah State Bulletin*, the proposed changes to R313-15, R313-19, and R313-24. The rule changes incorporate the federal decommissioning planning regulations promulgated by the U.S. Nuclear Regulatory Commission (NRC) on June 17, 2011. (76 FR 35512). The NRC issued the regulations to improve decommissioning planning in order to reduce the likelihood that any current operating facility will become a legacy site. The amended regulations require licensees to conduct their operations to minimize the introduction of residual radioactivity into the site, which includes the site's subsurface soil and groundwater. Licensees also may be required to perform site surveys to determine whether residual radioactivity is present in subsurface areas and to keep records of these surveys with records important for decommissioning. The amended regulations require licensees to report additional details in their decommissioning cost estimate, eliminate the escrow account and line of credit as approved financial assurance mechanisms and modify other financial assurance requirements. Changes to Utah rules are required in order to maintain compatibility with NRC regulations as an Agreement State with the NRC. Under NRC's requirements, an Agreement State has three years from the effective date of a federal regulation to adopt a corresponding rule. The proposed rule changes were published in the January 1, 2016 edition of the *Utah State Bulletin* (Bulletin), initiating the public comment period which ended on February 1, 2016. No comments were received regarding the proposed rule changes to R313-15, R313-19, and R313-24.
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain program primacy (Agreement State status) from the federal government (NRC). The proposed rulemaking also meets the Utah's rulemaking procedures under 63G-3, Utah Administrative Rulemaking Act, Utah Code Annotated, and implementing rules of R15, Utah Admin. Code.
Is Board action required?	Yes. Board approval is needed for final adoption of the proposed rule changes and to set an effective date of March 15, 2016.

What is the Division Director's recommendation?	The Director recommends the Board approve for final adoption, the proposed rule changes to R313-15, *Standards for Protection of Radiation*, R313-19, *Requirements of General Applicability to Licensing of Radioactive Material*, and R313-24, *Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements*, as published in the January 1, 2016 Bulletin and set an effective date of March 15, 2016.
Where can more information be obtained?	For questions or additional information, please contact Rusty Lundberg at (801) 536-4257 or rlundberg@utah.gov.

R313. Environmental Quality, Radiation Control.
R313-15. Standards for Protection Against Radiation.
R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem)per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment[~~as described in Subsection R313-22-35(6)(a)~~];

(b) [~~Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);~~

~~(c)~~]A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

(c[~~d~~]) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) one mSv (0.1 rem) per year; or

(b) five mSv (0.5 rem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Director may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and

(b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(d) Has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(e) Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(2) The use of alternate criteria to terminate a license requires the approval of the Director after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-406. Minimization of Contamination.

(1) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

(2) Licenses shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in Section R313-15-101 and radiological criteria for license termination in Sections R313-15-1401 through R313-15-1406.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys of areas, including the subsurface, that:

(a) [~~Are~~]May be necessary for the licensee or registrant to comply with Rule R313-15; and

(b) Are [~~necessary~~]reasonable under the circumstances to evaluate:

(i) The magnitude and the extent of radiation levels; and

(ii) Concentrations or quantities of residual radioactive material; and

(iii) The potential radiological hazards of the radiation levels and residual radioactivity detected.

(2) Notwithstanding R313-15-1103(1), records from surveys describing the location and amount of subsurface residual radioactivity identified at the site shall be kept with records important for decommissioning, and such records shall be retained in accordance with R313-22-35(7), as applicable.

[~~(2)~~](3) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

[~~(3)~~](4) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

[~~(4)~~](5) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

KEY: radioactive materials, contamination, waste disposal, safety
Date of Enactment or Last Substantive Amendment: March 17, 2015

Notice of Continuation: December 3, 2012
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

R313. Environmental Quality, Radiation Control.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2)(a) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(b) An application for transfer of license shall include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by R313-22-35.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(15), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made.

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10) (a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

KEY: licenses, reciprocity, transportation, exemptions
Date of Enactment or Last Substantive Amendment: August 26, 2015
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

R313. Environmental Quality, Radiation Control.
R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.
R313-24-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

(4) See R313-17-4 for special procedures for decisions associated with licenses for activity which results in the production or disposal of byproduct material.

R313-24-2. Scope.

(1) The requirements in Rule R313-24 apply to source material milling operations, byproduct material, and byproduct material disposal facilities.

R313-24-3. Environmental Analysis.

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Director shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

R313-24-4. Clarifications or Exceptions.

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); the introductory paragraph of 40.36 and 40.36(a), (b), (d) and (f); 40.41(c); the introduction to 40.42(k) and 40.42(k)(3)(i); 40.46; 40.61(a) and (b); 40.65; and Appendix A to Part 40 (2015) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

(2) The substitution of the following:

(a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;

(b) "Director" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.36(f), 40.41(c), 40.46(a), 40.61, and 40.65; and "Director" for reference to "NRC" in 10 CFR 40.36(b)

(c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);

(d) "Rule R313-15-402" for reference to "10 CFR 20.1402 and "Rule 313-15-403" for reference to "10 CFR 20.1403" in 10 CFR 40.36(d);

(e) "Rule 313-15-1109" for reference to "10 CFR 20.2108" in 10 CFR 40.36(f);

[~~(d)~~](f) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);

[~~(e)~~](g) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);

[~~(f)~~](h) In 10 CFR 40.42(k)(3)(i), "R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";

[~~(g)~~](i) "source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);

[~~(h)~~](j) "Director" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);

[~~(i)~~](k) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and

[~~(j)~~](l) In Appendix A to 10 CFR part 40, the following substitutions:

(i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in 10 CFR 40.36(f) and in the first paragraph of the introduction to Appendix A;

(ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;

(iii) "Director as defined in Subsection 19-5-102(6)" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);

(iv) "Director" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criterions 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10 of Appendix A;

(v) "license issued by the Director" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;

(vi) "Director" for reference to "NRC" in Criterion 4D;

(vii) "representatives of the Director" for reference to "NRC staff" in Criterion 6(6);

(viii) "Director-approved" for reference to "Commission-approved" in Criterion 6A(1) and Criterion 9;

(ix) "Director" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and

(x) "Director" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

KEY: environmental analysis, uranium mills, tailings, byproduct material
Date of Enactment or Last Substantive Amendment: June 16, 2015
Notice of Continuation: May 24, 2012
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Administrative Rulemaking
Change in a Previously Proposed Rule Change – R313-22-35
March 10, 2016

What is the issue before the Board?	An additional change needs to be made to R313-22-35, *Financial Assurance and Recordkeeping for Decommissioning*, based on a comment received from the U.S. Nuclear Regulatory Commission (NRC). (See attached NRC letter.)
What is the historical background or context for this issue?	On December 10, 2015, the Board approved filing with the Division of Administrative Rules and publication in the *Utah State Bulletin*, proposed changes to R313-22, *Specific Licenses*, together with other proposed changes to R313-15, R313-19 and R313-24. Changes to these rules were required in order to maintain regulatory compatibility with the NRC by incorporating federal decommissioning planning regulations promulgated by the U.S. Nuclear Regulatory Commission (NRC) on June 17, 2011. (76 FR 35512). However, the comment from the NRC only affects a paragraph in Section R313-22-35. NRC requested the following noted change to paragraph R313-22-35(5)(a)(C): (C) The volume of onsite subsurface material containing residual radioactivity that will require remediation ~~to meet the criteria for license termination~~; (See yellow highlighted text in the rule following this Executive Summary.)
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain program primacy (Agreement State status) from the federal government (NRC). The proposed rulemaking action also meets the Utah's rulemaking procedures under 63G-3, Utah Administrative Rulemaking Act, Utah Code Annotated and the associated implementing rules of R15, Utah Admin. Code.
Is Board action required?	Yes. Approval to file a Change in a Proposed Rule to R313-22 with the Division of Administrative Rules is needed to address NRC's requested change and maintain compatibility with the corresponding federal radioactive materials regulations.
What is the Division Director's recommendation?	The Director recommends the Board approve the additional change to R313-22-35, as requested by the NRC, by filing a Change in a Proposed Rule for publication in the *Utah State Bulletin* and setting an effective date of May 9, 2016 for all changes to R313-22.
Where can more information be obtained?	For questions or additional information, please contact Rusty Lundberg at (801) 536-4257 or rlundberg@utah.gov.

DSHW-2016-005642

NOTICE OF
CHANGE IN PROPOSED RULE

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

Rule Information

DAR file no: 39991 Date filed:
State Admin Rule Filing Key: 157265
Utah Admin. Code ref. (R no.): R313-22

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation

Room no.: Third Floor
Building:
Street address 1: 195 N 1950 W
Street address 2:
City, state, zip: SALT LAKE CITY UT 84116-3085
Mailing address 1: PO BOX 144850
Mailing address 2:
City, state, zip: SALT LAKE CITY UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Rusty Lundberg	801-536-4257	801-533-4097	rlundberg@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Specific Licenses

Notice Type

3. Type of notice: Change in Proposed Rule
Changes DAR No.: 39991
(If you do not know the DAR no., call 801-538-3218.)

Rule Purpose

4. Purpose of the rule or reason for the change:
As an Agreement State with the U.S. Nuclear Regulatory Commission (NRC), Utah is required to have and maintain rules regarding radioactive materials that are compatible with the corresponding NRC radioactive materials regulations. The NRC reviewed the proposed changes for compatibility and provided a comment requesting a change to the originally proposed rule changes. The proposed rule change incorporates the NRC requested change and will result in the state rule being compatible with the corresponding NRC regulation.

Response Information

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

Rule Summary

6. Summary of the rule or change:
The proposed rule change incorporates the NRC requested change by deleting the phrase "to meet the criteria for license termination" from paragraph R313-22-35(5)(a)(i)(C). Removing this text will make the state rule compatible with the corresponding NRC regulation, as found in 10 CFR 70.25(e)(1)(C).

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:
A) State budget:
Affected: (●) No ( ) Yes
The proposed change does not have any state fiscal or budgetary impact.

B) Local government:

Affected: ◉ No ○ Yes

The proposed change does not have any fiscal impact to local government.

C) Small businesses:

Affected: ◉ No ○ Yes

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

The proposed change does not have any fiscal impact on small businesses.

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

Affected: ◉ No ○ Yes

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

The proposed change does not have any fiscal impact to other entities not addressed by the preceding sections.

Compliance Cost Information

8. Compliance costs for affected persons:

There are no compliance costs to radioactive materials licensees as a result of the proposed rule change.

Department Head Comments

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

As a change that simply removes supplementary text that is not compatible with the corresponding NRC regulation, there is no fiscal, administrative, or operational impacts associated with the proposed rule change.

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

Alan Matheson, Executive Director

Citation Information

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

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

19-3-104, 42 USC 2021

Incorporated Materials

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

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Comments

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

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

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

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

Proposed Effective Date

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

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

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
specific licenses, radioactive materials, decommissioning

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 02/18/2016

[NOTE: The change requested by the NRC is highlighted in yellow. All other marked changes were previously approved by the Board on December 10, 2015 to receive public comment and will remain unchanged and become effective at the same time the additional change highlighted in yellow becomes effective. Based on Board approval at the March 10, 2016 meeting, the earliest effective date for all changes will be May 9, 2016.]

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, [~~2010~~]2015, which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

[~~(f)~~](g) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)[~~(g)~~](h), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)[~~(g)~~](h), shall submit a decommissioning funding plan to the Director as a part of the license application.

[~~(g)~~](h) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

[~~(h)~~](i) Documents provided to the Director under Subsection R313-22-35(3)[~~(g)~~](h) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	$225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one:	$113,000

(5)(a)[~~ A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed 3 years. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).~~]Each decommissioning funding plan shall be submitted for review and approval and shall contain-

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

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

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6), unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning.

(b) At the time of license renewal and at intervals not to exceed three years, the decommissioning funding plan shall be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority

control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

KEY: specific licenses, decommissioning, broad scope, radioactive materials
Date of Enactment or Last Substantive Amendment: August 26, 2015
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 8, 2016

Mr. Scott Anderson, Director
Division of Waste Management and Radiation Control
Utah Department of Environmental Quality
195 North 1950 West
P.O. Box 14485
Salt Lake City, UT 84116

Dear Mr. Anderson

We have reviewed the proposed revisions to the Utah Radiation Control Rules received by our office on January 13, 2016. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Rusty Lundberg on February 3, 2016.

As a result of our review, we have one comment that has been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Utah regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Utah regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comment and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS.

The SRS Data Sheet summarizes our knowledge of the status of other Utah regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the NMSS State Communication Portal: https://scp.nrc.gov/rulemaking.html.

If you have any questions regarding the review, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Michelle Beardsley State Regulation Review Coordinator, at (610) 337-6942 (Michelle.Beardsley@nrc.gov) or Lizette Roldán-Otero at (817) 200-1596 (Lizette.Roldan@nrc.gov).

Sincerely,

/RA Paul Michalak for/

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:
1. Compatibility Comment
2. Utah SRS Data Sheet

COMPATIBILITY COMMENT ON UTAH PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	313-22-35(5)(A)	70.25(e)	2011-1	H&S	**Financial assurance and recordkeeping for decommissioning** Utah adds the phrase, "to meet the criteria for license termination" at the end of their equivalent regulation to 10 CFR Part 70.25(e)(1)(i)(C). Utah needs to delete the phrase "to meet the criteria for license to termination" because this regulation is requiring the licensee to meet the criteria in the **decommissioning plan**. Utah needs to make the change indicated above in order to meet the Compatibility Category H&S designation assigned to 10 CFR Part 70.25(e).

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
Public Comment on Rules R315-310 and R315-319
March 10, 2016

What is the issue before the Board?	The Board is being asked to approve, for publication in the Utah State Bulletin, changes to R315-310, Permit Requirements for Solid Waste Facilities and adoption of R315-319, rules for the management of Coal Combustion Residuals in landfills and surface impoundments.
What is the historical background or context for this issue?	R315-319 follows the implementation of new federal rules outlining the minimum criteria for disposal of coal combustion residuals in landfills and surface impoundments. The federal rule was published in April of 2015 and became effective on October 19, 2015. R315-319 establishes solid waste permit criteria for the management of Coal Combustion Residuals in Utah. These rules require that landfills disposing of coal combustion residuals and surface impoundments containing coal combustion residuals have a solid waste permit that meets the requirements of R315-319. R315-319 follows the same management criteria as defined in the federal rules of 40 CFR 257. R315-310 adds Coal Combustion Residual Landfills and Coal Combustion Residual Surface Impoundments to the list of landfills requiring permits. The rule also adds language permitting operation of landfills that are in operation at the time a permit is required provided an application is submitted within six months of the effective date of the rule and the information required in the permit application.
What is the governing statutory or regulatory citation?	The Solid and Hazardous Waste Act, 19-6-104 and 19-6-106.
Is Board action required?	Yes. Board approval is necessary to begin the rule making process with publication in the Utah State Bulletin.
What is the Division Director's recommendation?	The Director recommends that the Board approve the proposed changes to R315-310 and the addition of R315-319 for publication in the Utah State Bulletin to begin the public comment period.
Where can more information be obtained?	If you have any questions, please call Allan Moore at (801) 536-0211 or Ralph Bohn at (801) 536-0212.

NOTICE OF
PROPOSED NEW RULE

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

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 156764
Utah Admin. Code ref. (R no.): R315-319

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

Room no.: Second Floor
Building:
Street address 1: 195 N 1950 W
Street address 2:
City, state, zip: SALT LAKE CITY UT 84116-3097
Mailing address 1: PO BOX 144880
Mailing address 2:
City, state, zip: SALT LAKE CITY UT 84114-4880

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Coal Combustion Residuals Requirements.

Notice Type

3. Type of notice: New Rule

Rule Purpose

4. Purpose of the rule or reason for the change:
The rule establishes a permit and compliance program for electric power generation facilities that generate coal ash.

Response Information

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

Rule Summary

6. Summary of the rule or change:
The rule establishes the requirements that must be met to receive a permit for a coal ash disposal facility including siting, design, operation, maintenance, closure, and monitoring. Compliance time frames and permit requirements are established.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:
A) State budget:
Affected: (●) No ( ) Yes
The program will require permits for three facilities that are not currently under a solid waste permit. The increased workload will be absorbed by current staff.
B) Local government:
Affected: (●) No ( ) Yes
No facility that will be required to obtain a permit is operated by a local government.

C) Small businesses:

Affected: ◉ No ○ Yes

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

No facility that will be impacted by the rule is a small business.

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

Affected: ◉ No ○ Yes

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

No person, other than the four facilities discussed in other parts of the rule analysis form, are affected by the rule.

Compliance Cost Information

8. Compliance costs for affected persons:

The facilities that are affected by the rule are currently required to generate all of the information require by the rule as part of a US Environmental Protection Agency rule. There will be no extra cost to a facility to provide the same information to the Division except for the cost of postage. Each permit applicant will be required to pay a permit application of $750.00 and a review fee of $90.00 per hour with a total estimated cost for permit review of $3,000.00.

Department Head Comments

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

The facilities that are affected by the rule are currently required to generate all of the information require by the rule as part of a US Environmental Protection Agency rule. There will be no extra cost to a facility to provide the same information to the Division except for the cost of postage. Each permit applicant will be required to pay a permit application of $750.00 and a review fee of $90.00 per hour with a total estimated cost for permit review of $3,000.00.

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

Alan Matheson

Citation Information

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

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

Section 19-6-108

Incorporated Materials

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

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Comments

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

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 03/02/2016

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

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

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 03/09/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date.

After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
permit, coal ash, solid waste

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:	Scott Anderson Director	Date (mm/dd/yyyy): 01/05/2016

NOTICE OF
PROPOSED RULE AMENDMENT

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

Rule Information

DAR file no: Date filed:
State Admin Rule Filing Key: 156766
Utah Admin. Code ref. (R no.): R315-310

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

Room no.: Second Floor
Building:
Street address 1: 195 N 1950 W
Street address 2:
City, state, zip: SALT LAKE CITY UT 84116-3097
Mailing address 1: PO BOX 144880
Mailing address 2:
City, state, zip: SALT LAKE CITY UT 84114-4880

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

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

Rule Title

2. Title of rule or section (catchline):
Permit Requirements for Solid Waste Facilities.

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:
Add coal ash facilities operated by electrical generation facility to the list of facilities requiring a permit.

Response Information

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

Rule Summary

6. Summary of the rule or change:
The rule change adds coal ash disposal facilities resulting from electric power generation to the list of solid waste disposal facilities that are required to have a solid waste permit. It makes some wording changes to clarify the rule and adds a section that refers to the information that will be required in a permit application for a coal ash disposal facility.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:
A) State budget:
Affected: (●) No ( ) Yes
All costs for this rule change are covered in the rule analysis for new rule R315-319.
B) Local government:
Affected: (●) No ( ) Yes
All costs for this rule change are covered in the rule analysis for new rule R315-319.
C) Small businesses:

Affected: ◉ No ○ Yes

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

All costs for this rule change are covered in the rule analysis for new rule R315-319.

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

Affected: ◉ No ○ Yes

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

All costs for this rule change are covered in the rule analysis for new rule R315-319.

Compliance Cost Information

8. Compliance costs for affected persons:

All costs for this rule change are covered in the rule analysis for new rule R315-319.

Department Head Comments

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

All costs for this rule change are covered in the rule analysis for new rule R315-319.

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

Alan Matheson

Citation Information

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

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

Section 19-6-108, Section 19-6-105, 40 CFR 258, Section 19-6-109

Incorporated Materials

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

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Comments

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

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 03/02/2016

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

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

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 03/09/2016

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

Indexing Information

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

solid waste management, waste disposal

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:	Scott Anderson Director	Date (mm/dd/yyyy): 01/05/2016

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

R315-319. Coal Combustion Residuals Requirements.

R315-319-1. Permit Required.

(a) All landfills disposing of coal combustion residuals and surface impoundments containing coal combustion residuals shall have a permit for a Class I, II, or V landfill in accordance with Rules R315-302 through 307 or a coal combustion residuals permit issued under Rule R315-319.

(b) An application for a permit for a coal combustion residual landfill or surface impoundment *or multiple landfills and impoundments at a facility covered by one permit* shall be made to the Director.

(c)(1) An application for a permit a Coal Combustion Residue (CCR) unit shall contain the information required in Sections R315-319-60 through 107. No information need be submitted for which the effective date in Sections R315-319-60 through 107 has not been reach at the time of application submittal.

(2) All information required in Sections R315-319-60 through 107 with an effective date that falls later that the application submittal required in Subsection R315-319-1(c)(1) shall be submitted within six months of the effective date of the requirement found in Sections R315-319-60 through 107.

(d) Permit application procedures shall follow the requirements of Sections R315-310-1 and 2.

(e) Permit transfers shall follow the procedures of Section R315-310-11.

(f) Permit applicants shall follow the notification requirements of Subsection R315-310-3(2).

(g) Permit approvals shall follow the requirements of Rule R315-311.

(h) The Director approvals required in Sections R315-319-60 through 107 are satisfied by the issuance of a permit by the Director.

R315-319-2. Relation to Federal Coal Combustion Residuals Rule in 40 CFR 257.

(a) The compliance dates in 40 CFR 257 Subpart D are not affected by the requirements in Rule R315-319 for director approval except as the extensions allowed by 40CFR 256.26 may be applied by the Director.

R315-319-50. Scope and Applicability.

(a) Rule R315-319 establishes criteria for purposes *managing* coal combustion residuals in Utah.

(b) *Rule R315-319 applies, except as provided in Subsection R315-319-50(i), to owners and operators of new and existing CCR units as defined in Subsection R315-319-53(a)(15).* Rule R315-319 applies to any practice that does not meet the definition of a beneficial use of coal combustion residuals.

(c) Rule R315-319 applies to inactive CCR surface impoundments that have not closed prior to the effective date of Rule R315-319.

(d) Rule R315-319 does not apply to coal combustion residual landfills that have ceased receiving coal combustion residuals prior to October 19, 2015.

(e) Rule R315-319 does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.

(f) Rule R315-319 does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels, including other fossil fuels, other than coal. Disposal of these solid wastes are covered by Rules R315-301 through 307.

(g) Rule R315-319 does not apply to practices that meet the definition of a beneficial use of coal combustion residuals.

(h) Rule R315-319 does not apply to coal combustion residual placement at active or abandoned underground or surface coal mines.

(i) Rule R315-319 does not apply to Class I or V solid waste landfills that receive coal combustion residuals.

R315-319-51. Effective Date.

The effective date of R315-319 will be based on the approval of the Waste Management and Radiation Control Board after publication in the Utah State Bulletin.

R315-319-52. Applicability of Other Regulations.

(a) Compliance with the requirements of Sections R315-319-50 through 107 does not affect the need for the owner or operator of a coal combustion residuals landfill, coal combustion residuals surface impoundment, or lateral expansion of a coal combustion residuals unit to comply with all other applicable federal, state, tribal, or local laws or other requirements.

(b) Any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit continues to be subject to the requirements in Section R315-302-2.

R315-319-53. Definitions.

(a) The following definitions apply to Rule R315-319. Terms not defined in Section R315-319-53 have the meaning given In R315-301.

(1) "Acre foot" means the volume of one acre of surface area to a depth of one foot.

(2) "Active facility or active electric utilities or independent power producers" means any facility subject to the requirements of Sections R315-319-50 through 107 that is in operation on October 14, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 14, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 14, 2015.

(3) "Active life or in operation" means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with Section R315-319-102.

(4) "Active portion" means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with Section R315-319-102.

(5) "Aquifer" means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(6) "Area-capacity curves" means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the

reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

(7) "Areas susceptible to mass movement means those areas of influence, i.e., areas characterized as having an active or substantial possibility of mass movement, where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(8) "Beneficial use of CCR" means the CCR meet all of the following conditions:

(i) The CCR shall provide a functional benefit;

(ii) The CCR shall substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

(iii) The use of the CCR shall meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

(iv) When unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user shall demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use in accordance with R315-101.

(9) "Closed" means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with Subsection R315-319-102 and has initiated post-closure care in accordance with Subsection R315-319-104.

(10) "Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(11) "CCR fugitive dust" means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

(12) "CCR landfill or landfill" means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of Rule R315-319, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

(13) "CCR pile or pile" means any non-containerized accumulation of solid, non-flowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

(14) "CCR surface impoundment or impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

(15) "CCR unit" means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the

context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.

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

(17) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(18) "Disposal" is defined in 19-6-102(7); disposal does not include the storage or the beneficial use of CCR.

(19) "Downstream toe" means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

(20) "Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

(21) "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 14, 2015, or for which construction commenced prior to October 14, 2015 and receives CCR on or after October 14, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 14, 2015.

(22) "Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 14, 2015, or for which construction commenced prior to October 14, 2015 and receives CCR on or after October 14, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 14, 2015.

(23) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(24) "Factor of safety, Safety factor," means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

(25) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(26) "Flood hydrograph" means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

(27) "Freeboard" means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

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

(29) "Groundwater" means water below the land surface in a zone of saturation.

(30) "Hazard potential classification" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface

impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment, which terms mean:

(i) High hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(ii) Low hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the surface impoundment owner's property.

(iii) Significant hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

(31) "Height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

(32) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

(33) "Hydraulic conductivity" means the rate at which water can move through a permeable medium, i.e., the coefficient of permeability.

(34) "Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 14, 2015 and still contains both CCR and liquids on or after October 14, 2015.

(35) "Incised CCR surface impoundment" means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

(36) "Inflow design flood" means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

(37) "In operation" means the same as active life.

(38) "Karst terrain" means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

(39) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 14, 2015.

(40) "Liquefaction factor of safety" means the factor of safety, safety factor, determined using analysis under liquefaction conditions.

(41) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(42) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(43) New CCR landfill means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 14, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 14, 2015. Overfills are also considered new CCR landfills.

(44) "New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 14, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 14, 2015.

(45) "Operator" means the person(s) responsible for the overall operation of a CCR unit.

(46) "Overfill" means a new CCR landfill constructed over a closed CCR surface impoundment.

(47) "Owner" means the person(s) who owns a CCR unit or part of a CCR unit.

(48) "Poor foundation conditions" mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in Subsections R315-319-73(e) and 74(e) would cause a poor foundation condition.

(49) "Probable maximum flood" means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

(50) "Qualified person" means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

(51) "Qualified professional engineer" means an individual who is licensed by Utah as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under Sections R315-319-50 through 107.

(52) "Recognized and generally accepted good engineering practices" means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

(53) "Retrofit" means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in Section R315-319-72

(54) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, and groundwater, which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Chapter 9, available at http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm, for a discussion and examples of representative samples.

(55) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

(56) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

(57) "Sand and gravel pit or quarry" means an excavation for the extraction of aggregate, minerals or metals. The term sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

(58) "Seismic factor of safety" means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

(59) "Seismic impact zone" means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

(60) "Slope protection" means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

(61) "Solid waste management or management" means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

(62) State means the State of Utah unless otherwise indicated.

(63) State Director or Director means the director of the Division of Waste Management and Radiation Control.

(64) "Static factor of safety" means the factor of safety, safety factor, determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

(65) "Structural components" mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

(66) "Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases

from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(67) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

(68) "Waste boundary" means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

R315-319-60. Location Restrictions

Placement above the uppermost aquifer.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall be constructed with a base that is located no less than 1.52 meters, five feet, above the upper limit of the uppermost aquifer, or shall demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations, including the seasonal high water table. The owner or operator shall demonstrate by the dates specified in Subsection R315-319-60(c) that the CCR unit meets the minimum requirements for placement above the uppermost aquifer.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-60(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-60(a) by the date specified in either Subsection R315-319-60(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-60(a) when the demonstration has been submitted to and has received approval from the Director and is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-60(a) by the date specified in Subsection R315-319-60(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-60(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the internet requirements specified in Subsection R315-319-107(e).

R315-319-61. Wetlands.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located in wetlands, as defined in Section R315-301-2, unless the owner or operator demonstrates by the dates specified in Rule R315-319 (c) that the CCR unit meets the requirements of Subsections R315-319-61(a)(1) through (5).

(1) Where applicable under section 404 of the Clean Water Act or applicable Utah wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.

(2) The construction and operation of the CCR unit will not cause or contribute to any of the following:

(i) A violation of any applicable Utah or federal water quality standard;

(ii) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act; and

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973.

(3) The CCR unit will not cause or contribute to significant degradation of wetlands by addressing all of the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CCR unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;

(iii) The volume and chemical nature of the CCR;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

(v) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent reasonable as required by Subsections R315-319-61(a)(1) through (3), then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions, e.g., restoration of existing degraded wetlands or creation of man-made wetlands; and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations in Subsections R315-319-61(a)(1) through (4).

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-61(a).

(c) The owner or operator of the CCR unit shall complete the demonstrations required by Subsection R315-319-61(a) by the date specified in either Subsection R315-319-61(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-61(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-61(a) by the date specified in Subsection R315-319-61(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstrations showing compliance with the requirements of Subsection R315-319-61(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-62. Fault Areas.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located within 60 meters, 200 feet, of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in Subsection R315-319-62(c) that an alternative setback distance of less than 60 meters, 200 feet, will prevent damage to the structural integrity of the CCR unit.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-62(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-62(a) by the date specified in either Subsection R315-319-62(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-62(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-62(a) by the date specified in Subsection R315-319-62(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-62 (a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-63. Seismic Impact Zones.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in Subsection R315-319-63(c) that all structural components including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-63(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-63(a) by the date specified in either Subsection R315-319-63(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-63(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-63(a) by the date specified in Subsection R315-319-63(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing

compliance with the requirements of Subsection R315-319-63(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-64. Unstable Areas.

(a) An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansion of a CCR unit shall not be located in an unstable area unless the owner or operator demonstrates by the dates specified in Subsection R315-319-64(d) that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.

(b) The owner or operator shall consider all of the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events, both surface and subsurface.

(c) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-64(a).

(d) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-64(a) by the date specified in either Subsection R315-319-64(d)(1) or (2).

(1) For an existing CCR landfill or existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-64(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment or existing CCR landfill who fails to demonstrate compliance with the requirements of Subsection R315-319-64(a) by the date specified in Subsection R315-319-64(d)(1) is subject to the requirements of Subsection R315-319-101(b)(1) or (d)(1), respectively.

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-64(a) is prohibited from placing CCR in the CCR unit.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements

specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-70. Design Criteria for New CCR Landfills and Any Lateral Expansion of a CCR Landfill.

(a)(1) New CCR landfills and any lateral expansion of a CCR landfill shall be designed, constructed, operated, and maintained with either a composite liner that meets the requirements of Subsection R315-319-70(b) or an alternative composite liner that meets the requirements in Subsection R315-319-70(c), and a leachate collection and removal system that meets the requirements of Subsection R315-319-70(d).

(2) Prior to construction of an overfill the underlying surface impoundment shall meet the requirements of Subsection R315-319-102(d).

(b) A composite liner shall consist of two components; the upper component consisting of, at a minimum, a 30-mil geomembrane liner (GM), and the lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec). GM components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The GM or upper liner component shall be installed in direct and uniform contact with the compacted soil or lower liner component. The composite liner shall be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

(3) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.

(c) If the owner or operator elects to install an alternative composite liner, all of the following requirements shall be met:

(1) An alternative composite liner shall consist of two components; the upper component consisting of, at a minimum, a 30-mil GM, and a lower component, that is not a geomembrane, with a liquid flow rate no greater than the liquid flow rate of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. GM components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. If the lower component of the alternative liner is compacted soil, the GM shall be installed in direct and uniform contact with the compacted soil.

(2) The owner or operator shall obtain certification from a qualified professional engineer that the liquid flow rate through the lower component of the alternative composite liner is no greater than the liquid flow rate through two feet of compacted soil with a hydraulic conductivity of 1×10^{-7} cm/sec. The hydraulic conductivity for the two feet of compacted soil used in the comparison shall be no greater than 1×10^{-7} cm/sec.

The hydraulic conductivity of any alternative to the two feet of compacted soil shall be determined using recognized and generally accepted methods. The liquid flow rate comparison shall be made using Equation 1 of Section R315-319-70, which is derived from Darcy's Law for gravity flow through porous media.

Equation 1
$Q/A=q=k(h/t+1)$

Where,
Q = flow rate, cubic centimeters/second;
A = surface area of the liner, squared centimeters;
q = flow rate per unit area, cubic centimeters/second/squared centimeter;
k = hydraulic conductivity of the liner, centimeters/second;
h = hydraulic head above the liner, centimeters; and
t = thickness of the liner, centimeters.

(3) The alternative composite liner shall meet the requirements specified in Subsections R315-319-70(b)(1) through (4).

(d) The leachate collection and removal system shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The leachate collection and removal system shall be:

(1) Designed and operated to maintain less than a 30-centimeter depth of leachate over the composite liner or alternative composite liner;

(2) Constructed of materials that are chemically resistant to the CCR and any non-CCR waste managed in the CCR unit and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying waste, waste cover materials, and equipment used at the CCR unit; and

(3) Designed and operated to minimize clogging during the active life and post-closure care period.

(e) Prior to construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer that the design of the composite liner; or, if applicable, alternative composite liner; and the leachate collection and removal system meets the requirements of Section R315-319-70.

(f) Upon completion of construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer that the composite liner; or, if applicable, alternative composite liner; and the leachate collection and removal system has been constructed in accordance with the requirements of Section R315-319-70.

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-71. Liner Design Criteria for Existing CCR Surface Impoundments.

(a)(1) No later than October 17, 2016, the owner or operator of an existing CCR surface impoundment shall document whether or not such unit was constructed with any one of the following:

(i) A liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec;

(ii) A composite liner that meets the requirements of Subsection R315-319-70(b); or

(iii) An alternative composite liner that meets the requirements of Subsection R315-319-70(c).

(2) The hydraulic conductivity of the compacted soil shall be determined using recognized and generally accepted methods.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(i) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of Subsection R315-319-71(a)(1)(i), (ii), or (iii); or

(ii) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of Subsection R315-319-71 (a)(1)(i), (ii), or (iii).

(4) All existing unlined CCR surface impoundments are subject to the requirements of Subsection R315-319-101(a).

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer attesting that the documentation as to whether a CCR unit meets the requirements of Subsection R315-319-71(a) is accurate.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-72. Liner Design Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments shall be designed, constructed, operated, and maintained with either a composite liner or an alternative composite liner that meets the requirements of Subsection R315-319-70(b) or (c).

(b) Any liner specified in Section R315-319-72 shall be installed to cover all surrounding earth likely to be in contact with CCR. Dikes shall not be constructed on top of the composite liner.

(c) Prior to construction of the CCR surface impoundment or any lateral expansion of a CCR surface impoundment, the owner or operator shall obtain certification from a qualified professional engineer that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of Section R315-319-72.

(d) Upon completion, the owner or operator shall obtain certification from a qualified professional engineer that the composite liner or if applicable, the alternative

composite liner has been constructed in accordance with the requirements of Section R315-319-72.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-73. Structural Integrity Criteria for Existing CCR Surface Impoundments.

(a) The requirements of Subsections R315-319-73(a)(1) through (4) apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-73(a)(1) through (4).

(1) No later than, December 17, 2015, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-73(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-73(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-73.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-73(a)(2) shall prepare and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-73(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit as required by Subsection R315-319-73(a)(3)(i) within six months of completing such periodic hazard potential assessment and submit the EAP to the Director for approval.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-73(a)(3) and submit the certification to the Director.

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of 6 inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-73(c) through (e) apply to an owner or operator of an existing CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit shall compile and submit to the Director a history of construction, which shall contain, to the extent feasible, the information specified in Subsections R315-319-73(c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7½ minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes to the history of construction. If there is a significant change to any information compiled under Subsection R315-319-73(c)(1), the owner or operator of the CCR unit shall update the relevant information, submit it to the Director, and place it in the facility's operating record as required by Subsection R315-319-105(f)(9).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation,

and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-73(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-73(d)(1)(v)(B).

(A) All spillways shall be either:

(1) Of non-erodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

(1) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(2) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(3) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-73(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken and submit the documentation to the Director.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-73 and submit the certification to the Director.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct and submit to the Director an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iii) The calculated seismic factor of safety shall equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-73(e)(1) meets the requirements of Section R315-319-73.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-73(f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-73(a)(2), (d), and (e) no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has and submit to the Director and placed the assessment required by Subsections R315-319-73(a)(2), (d), and (e) in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(2) Use of a previously completed assessment(s) in lieu of the initial assessment(s). The owner or operator of the CCR unit may elect to use a previously completed assessment to serve as the initial assessment required by Subsections R315-319-73(a)(2), (d), and (e) provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of Subsections R315-319-73 (a)(2), (d), and (e).

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete and submit to the Director the assessments required by Subsections R315-319-73 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by Subsection R315-319-73 (f)(2), the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator submits the assessment to the Director and places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In

all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73 (a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-73 (e) is subject to the requirements of Subsection R315-319-101(b)(2).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-74. Structural Integrity Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) The requirements of Subsections R315-319-74(a)(1) through (4) apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-74(a)(1) through (4).

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-74(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-74(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-74.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under

Subsection R315-319-74 (a)(2) shall prepare, and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-74(a)(3)(i) may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-74(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare and submit to the Director a written EAP for the CCR unit as required by Subsection R315-319-74(a)(3)(i) within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-74(a)(3).

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected,

including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of six inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-74(c) through (e) apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator unit shall compile the design and construction plans for the CCR unit, which shall include, to the extent feasible, the information specified in Subsection R315-319-74 (c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7½ minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes in the design and construction. If there is a significant change to any information compiled under Subsection R315-319-74 (c)(1), the owner or operator of the CCR unit shall update the relevant information and place it in the facility's operating record as required by Subsection R315-319-105(f)(13).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas not to exceed a height of six inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-74(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-74 (d)(1)(v)(B).

(A) All spillways shall be either:

(1) Of non-erodible construction and designed to carry sustained flows; or

(2) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

(1) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(2) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(3) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-74(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-74.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition shall equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iv) The calculated seismic factor of safety shall equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-74(e)(1) meets the requirements of Section R315-319-74.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-74 (f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-74(a)(2), (d), and (e) prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by Subsections R315-319-74 (a)(2), (d), and (e) in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(2) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct, complete the assessments required by Subsections R315-319-74 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's

operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-74 (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-74 (a)(2), (d), and (e) has been placed in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(3) Failure to document minimum safety factors during the initial assessment. Until the date an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in Subsections R315-319-74 (e)(1)(i) through (v), the owner or operator is prohibited from placing CCR in such unit.

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-74 (e) is subject to the requirements of Subsection R315-319-101(c).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-80. Operating Criteria - Air Criteria.

(a) The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

(b) CCR fugitive dust control plan. The owner or operator of the CCR unit shall prepare and operate in accordance with a CCR fugitive dust control plan has been submitted to and has received approval from the Director and as specified in Subsections R315-319-80(b)(1) through (7). This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan shall identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator shall select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan shall include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal, but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan shall include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan shall include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of a CCR unit shall prepare an initial CCR fugitive dust control plan for the facility no later than October 19, 2015, or by initial receipt of CCR in any CCR unit at the facility if the owner or operator becomes subject to Sections R315-319-50 through 107 after October 19, 2015. The owner or operator has completed the initial CCR fugitive dust control plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(1).

(6) Amendment of the plan. The owner or operator of a CCR unit subject to the requirements of Section R315-319-80 may amend the written CCR fugitive dust control plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(1). The owner or operator shall amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

(7) The owner or operator shall obtain a certification from a qualified professional engineer that the initial CCR fugitive dust control plan, or any subsequent amendment of it, meets the requirements of Section R315-319-80.

(c) Annual CCR fugitive dust control report. The owner or operator of a CCR unit shall prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The initial annual report shall be completed no later than 14 months after placing the initial CCR fugitive dust control plan in the facility's operating record. The deadline for completing a subsequent report is one year after the date of completing the previous report. For purposes of Subsection R315-319-80(c), the owner or operator has completed the annual CCR fugitive dust control report when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(2).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-81. Operating Criteria Run-On and Run-Off Controls for CCR Landfills.

(a) The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill shall design, construct, operate, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a 24-hour, 25-year storm; and

(2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the CCR unit shall be handled in accordance with the surface water requirements under Subsection R315-303-2(3).

(c) Run-on and run-off control system plan

(1) Content of the plan. The owner or operator shall prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the timeframes specified in Subsections R315-319-81(c)(3) and (4). These plans shall document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of Section R315-319-81. Each plan shall be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(3).

(2) Amendment of the plan. The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(3). The owner or operator shall amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Timeframes for preparing the initial plan

(i) Existing CCR landfills. The owner or operator of the CCR unit shall prepare the initial run-on and run-off control system plan no later than October 17, 2016.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator shall prepare the initial run-on and run-off control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) Frequency for revising the plan. The owner or operator of the CCR unit shall prepare periodic run-on and run-off control system plans required by Subsection R315-319-81(c)(1) every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of Subsection R315-319-81(c)(4), the owner or operator has completed a periodic run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(3).

(5) The owner or operator shall obtain a certification from a qualified professional engineer stating that the initial and periodic run-on and run-off control system plans meet the requirements of Section R315-319-81.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-82. Operating Criteria - Hydrologic and Hydraulic Capacity Requirements for CCR Surface Impoundments.

(a) The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall design, construct, operate, and maintain an inflow design flood control system as specified in Subsections R315-319-82(a)(1) and (2).

(1) The inflow design flood control system shall adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in Subsection R315-319-82(a)(3).

(2) The inflow design flood control system shall adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in Subsection R315-319-82(a)(3).

(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the 1,000-year flood;

(iii) For a low hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the 100-year flood; or

(iv) For an incised CCR surface impoundment, the 25-year flood.

(b) Discharge from the CCR unit shall be handled in accordance with the surface water requirements under Subsection R315-303-2(3).

(c) Inflow design flood control system plan

(1) Content of the plan. The owner or operator shall prepare initial and periodic inflow design flood control system plans for the CCR unit according to the timeframes specified in Subsections R315-319-82 (c)(3) and (4). These plans shall document how the inflow design flood control system has been designed and constructed to meet the requirements of Section R315-319-82. Each plan shall be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(4).

(2) Amendment of the plan. The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(4). The owner or operator shall amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Timeframes for preparing the initial plan

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall prepare the initial inflow design flood control system plan no later than October 17, 2016.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator shall prepare the initial inflow design flood control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) Frequency for revising the plan. The owner or operator shall prepare periodic inflow design flood control system plans required by Subsection R315-319-82(c)(1) every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In

all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of Subsection R315-319-82(c)(4), the owner or operator has completed an inflow design flood control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(4).

(5) The owner or operator shall obtain a certification from a qualified professional engineer stating that the initial and periodic inflow design flood control system plans meet the requirements of Section R315-319-82.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-83. Operating Criteria - Inspection Requirements for CCR Surface Impoundments.

(a) Inspections by a qualified person.

(1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment shall be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(ii) At intervals not exceeding seven days, inspect the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow or discharge of debris or sediment; and

(iii) At intervals not exceeding 30 days, monitor all CCR unit instrumentation.

(iv) The results of the inspection by a qualified person shall be recorded in the facility's operating record as required by Subsection R315-319-105(g)(5).

(2) Timeframes for inspections by a qualified person

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-83(a) no later than October 19, 2015.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-83(a) upon initial receipt of CCR by the CCR unit.

(b) Annual inspections by a qualified professional engineer.

(1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under Subsection R315-319-73(d) or Subsection R315-319-74(d), the CCR unit shall additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection shall, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record, e.g., CCR unit design and construction information required by Subsections R315-319-73(c)(1) and

74(c)(1), previous periodic structural stability assessments required under Subsections R315-319-73(d) and 74(d), the results of inspections by a qualified person, and results of previous annual inspections;

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(iii) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the impounding structure since the previous annual inspection;

(ii) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(iii) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(iv) The storage capacity of the impounding structure at the time of the inspection;

(v) The approximate volume of the impounded water and CCR at the time of the inspection;

(vi) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(vii) Any other change(s) which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) Timeframes for conducting the initial inspection

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall complete the initial inspection required by Subsections R315-319-8 (b)(1) and (2) no later than January 18, 2016.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall complete the initial annual inspection required by Subsections R315-319-83(b)(1) and (2) is completed no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections.

(i) Except as provided for in Subsection R315-319-83(b)(4)(ii), the owner or operator of the CCR unit shall conduct the inspection required by Subsections R315-319-83(b)(1) and (2) on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of Section R315-319-83, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by Subsection R315-319-105(g)(6).

(ii) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial, occurring every five years, structural stability assessment by a qualified professional engineer required by Subsections R315-319-73(d) and 74(d) are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. If the annual inspection is not conducted in a year as provided by Subsection R315-319-83(b)(4)(ii), the deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-84. Operating Criteria - Inspection requirements for CCR landfills.

(a) Inspections by a qualified person.

(1) All CCR landfills and any lateral expansion of a CCR landfill shall be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(ii) The results of the inspection by a qualified person shall be recorded in the facility's operating record as required by Subsection R315-319-105(g)(8).

(2) Timeframes for inspections by a qualified person

(i) Existing CCR landfills. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-84(a) no later than October 19, 2015.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-84(a) upon initial receipt of CCR by the CCR unit.

(b) Annual inspections by a qualified professional engineer.

(1) Existing and new CCR landfills and any lateral expansion of a CCR landfill shall be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection shall, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record, e.g., the results of inspections by a qualified person, and results of previous annual inspections; and

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the structure since the previous annual inspection;

(ii) The approximate volume of CCR contained in the unit at the time of the inspection;

(iii) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(iv) Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) Timeframes for conducting the initial inspection

(i) Existing CCR landfills. The owner or operator of the CCR unit shall complete the initial inspection required by Subsections R315-319-84(b)(1) and (2) no later than January 18, 2016.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall complete the initial annual inspection required by Subsections R315-319-84(b)(1) and (2) no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections. The owner or operator of the CCR unit shall conduct the inspection required by Subsections R315-319-84(b)(1) and (2) on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of Section R315-319-84, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by Subsection R315-319-105(g)(9).

(5) If a deficiency or release is identified during an inspection, the owner or operator shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-90. Groundwater Monitoring and Corrective Action - Applicability.

(a) Except as provided for in Subsection R315-319-100 for inactive CCR surface impoundments, all CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under Subsections R315-319-90 through 98.

(b) Initial timeframes

(1) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2017, the owner or operator of the CCR unit shall be in compliance with the following groundwater monitoring requirements:

(i) Install the groundwater monitoring system as required by Subsection R315-319-91;

(ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by Subsection R315-319-93;

(iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by Subsection R315-319-94(b); and

(iv) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in appendix III of Rule R315-319 as required by Subsection R315-319-94.

(2) New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units. Prior to initial receipt of CCR by the CCR unit, the owner or operator shall be in compliance with the groundwater monitoring requirements specified in Subsections R315-319-90(b)(1)(i) and (ii). In addition, the owner or operator of the CCR unit shall initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by Subsection R315-319-94(b).

(c) Once a groundwater monitoring system and groundwater monitoring program has been established at the CCR unit as required by Sections R315-319-50 through 107, the owner or operator shall conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) In the event of a release from a CCR unit, the owner or operator shall immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit shall comply with all applicable requirements in Subsections R315-319-96, 97, and 98.

(e) Annual groundwater monitoring and corrective action report. For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator shall prepare an annual groundwater monitoring and corrective action report and forward the report to the Director by March 1 of each year. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator shall prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by Sections R315-319-50 through 107, and annually thereafter. For the preceding calendar year, the annual report shall document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of Sections R315-319-90, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by Subsection R315-319-105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report shall contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background, or upgradient, and downgradient monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under Sections R315-319-90 through 98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs, e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituent(s) detected at a statistically significant increase over background levels; and

(5) Other information required to be included in the annual report as specified in Section R315-319-90 through 98.

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-91. Groundwater Monitoring and Corrective Action - Groundwater Monitoring Systems.

(a) Performance standard. The owner or operator of a CCR unit shall install a groundwater monitoring system consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system shall be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways shall be monitored.

(b) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include thorough characterization of:

(1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(c) The groundwater monitoring system shall include the minimum number of monitoring wells necessary to meet the performance standards specified in Subsection R315-319-91(a), based on the site-specific information specified in Subsection R315-319-91(b). The groundwater monitoring system shall contain:

(1) A minimum of one upgradient and three downgradient monitoring wells; and

(2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

(d) The owner or operator of multiple CCR units may install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit.

(1) The multiunit groundwater monitoring system shall be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in Subsections R315-319-91(a) through (c) for each CCR unit based on the following factors:

(i) Number, spacing, and orientation of each CCR unit;

(ii) Hydrogeologic setting;

(iii) Site history; and

(iv) Engineering design of the CCR unit.

(2) If the owner or operator elects to install a multiunit groundwater monitoring system, and if the multiunit system includes at least one existing unlined CCR surface impoundment as determined by Subsection R315-319-71(a), and if at any time after October 19, 2015 the owner or operator determines in any sampling event that the concentrations of one or more constituents listed in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) for the multiunit system, then all unlined CCR surface impoundments comprising the multiunit groundwater monitoring system are subject to the closure requirements under Subsection R315-319-101(a) to retrofit or close.

(e) Monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well borehole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space, i.e., the space between the borehole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(1) The owner or operator of the CCR unit shall document and include in the operating record the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices. The qualified professional engineer shall be given access to this documentation when completing the groundwater monitoring system certification required under Subsection R315-319-91(f).

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

(f) The owner or operator shall obtain a certification from a qualified professional engineer stating that the groundwater monitoring system has been designed and constructed to meet the requirements of Section R315-319-91. If the groundwater monitoring system includes the minimum number of monitoring wells specified in Subsection R315-319-91(c)(1), the certification shall document the basis supporting this determination.

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-93. Groundwater Monitoring and Corrective Action - Groundwater Sampling and Analysis Requirements.

(a) The groundwater monitoring program shall include consistent sampling and analysis procedures designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by Subsection R315-319-91. The owner or operator of the CCR unit shall develop and receive approval from the Director for a sampling and analysis program that includes procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. For purposes of Subsections R315-319-90 through 98, the term constituent refers to both hazardous constituents and other monitoring parameters listed in either appendix III or IV of Rule R315-319.

(c) Groundwater elevations shall be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator of the CCR unit shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same CCR management area shall be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

(d) The owner or operator of the CCR unit shall establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under Subsection R315-319-94(a) or Subsection R315-319-95(a). Background groundwater quality may be established at wells that are not located

hydraulically upgradient from the CCR unit if it meets the requirements of Subsection R315-319-91(a)(1).

(e) The number of samples collected when conducting detection monitoring and assessment monitoring, for both downgradient and background wells, shall be consistent with the statistical procedures chosen under Subsection R315-319-93(f) and the performance standards under Subsection R315-319-93(g). The sampling procedures shall be those specified under Subsections R315-319-94(b) through (d) for detection monitoring, Subsection R315-319-95(b) through (d) for assessment monitoring, and Subsection R315-319-96(b) for corrective action.

(f) The owner or operator of the CCR unit shall select one of the statistical methods specified in Subsections R315-319-93(f)(1) through (5) to be used in evaluating groundwater monitoring data for each specified constituent. The statistical test chosen shall be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure, in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of Subsection R315-319-93(g) and has been approved by the Director.

(6) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area. The certification shall include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

(g) Any statistical method chosen under Subsection R315-319-93(f) shall comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of constituents. Normal distributions of data values shall use parametric methods. Non-normal distributions shall use non-parametric methods. If the distribution of the constituents is shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free, non-parametric, theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less

than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be such that this approach is at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. The parameter values shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be such that this approach is at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that shall at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. Any practical quantitation limit that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(h) The owner or operator of the CCR unit shall determine whether or not there is a statistically significant increase over background values for each constituent required in the particular groundwater monitoring program that applies to the CCR unit, as determined under Subsection R315-319-94(a) or Subsection R315-319-95(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality of each constituent at each monitoring well designated pursuant to Subsection R315-319-91(a)(2) or (d)(1) to the background value of that constituent, according to the statistical procedures and performance standards specified under Subsections R315-319-93(f) and (g).

(2) Within 90 days after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

(i) The owner or operator shall measure “total recoverable metals” concentrations in measuring groundwater quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. Groundwater samples shall not be field-filtered prior to analysis.

(j) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-94 Groundwater Monitoring and Corrective Action - Detection Monitoring Program.

(a) The owner or operator of a CCR unit shall conduct detection monitoring at all groundwater monitoring wells consistent with Section R315-319-94. At a minimum, a detection monitoring program shall include groundwater monitoring for all constituents listed in appendix III to Rule R315-319.

(b) Except as provided in Subsection R315-319-94(d), the monitoring frequency for the constituents listed in appendix III to Rule R315-319 shall be at least semiannual during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well shall be collected and analyzed for the constituents listed in appendix III and IV to Rule R315-319 no later than October 17, 2017. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well shall be collected and analyzed for the constituents listed in appendices III and IV to Rule R315-319 during the first six months of sampling.

(c) The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each background and downgradient well.

(d) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix III to Rule R315-319 during the active life and the post-closure care period based on the availability of groundwater. This demonstration shall be submitted and approved by the Director. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis. The demonstration shall be supported by, at a minimum, the information specified in Subsections R315-319-94(d)(1) and (2).

(1) Information documenting that the need for less frequent sampling. The alternative frequency shall be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay establishment of an assessment monitoring program.

(3) The owner or operator shall obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of Section R315-319-94. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(e) If the owner or operator of the CCR unit determines, pursuant to Subsection R315-319-93(h) that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix III to Rule R315-319 at any monitoring well at the waste boundary specified under Subsection R315-319-91(a)(2), the owner or operator shall:

(1) Except as provided for in Subsection R315-319-94(e)(2), within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of Subsection R315-319-95.

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator shall complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under Section R315-319-94. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit shall initiate an assessment monitoring program as required under Subsection R315-319-95. The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(3) The owner or operator of a CCR unit shall prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(5).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-95. Groundwater Monitoring and Corrective Action - Assessment Monitoring Program.

(a) Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix III to Rule R315-319.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit shall sample and analyze the groundwater for all constituents listed in appendix IV to Rule R315-319. The number of samples collected and analyzed for each well during each sampling event shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each well.

(c) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents

listed in appendix IV to Rule R315-319 during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis. The demonstration shall be supported by, at a minimum, the information specified in Subsections R315-319-95(c)(1) and (2).

(1) Information documenting that the need for less frequent sampling. The alternative frequency shall be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator shall obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of Section R315-319-95. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(d) After obtaining the results from the initial and subsequent sampling events required in Subsection R315-319-95(b), the owner or operator shall:

(1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of Section R315-319-91, conduct analyses for all parameters in appendix III to Rule R315-319 and for those constituents in appendix IV to Rule R315-319 that are detected in response to Subsection R315-319-95(b), and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each background and downgradient well;

(2) Establish groundwater protection standards for all constituents detected pursuant to Subsection R315-319-95(b) or (d). The groundwater protection standards shall be established in accordance with Subsection R315-319-95(h); and

(3) Include the recorded concentrations required by Subsection R315-319-95(d)(1), identify the background concentrations established under Subsection R315-319-94(b), and identify the groundwater protection standards established under Subsection R315-319-95(d)(2) in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(e) If the concentrations of all constituents listed in appendices III and IV of Rule R315-319 are shown to be at or below background values, using the statistical procedures in Subsection R315-319-93(g), for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit. The owner or operator shall prepare a notification stating that detection monitoring is resuming for the CCR unit and

submit the notification to the Director for approval. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(7).

(f) If the concentrations of any constituent in appendices III and IV to Rule R315-319 are above background values, but all concentrations are below the groundwater protection standard established under Subsection R315-319-95(h), using the statistical procedures in Subsection R315-319-93(g), the owner or operator shall continue assessment monitoring in accordance with Section R315-319-95.

(g) If one or more constituents in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) in any sampling event, the owner or operator shall prepare a notification identifying the constituents in appendix IV to Rule R315-319 that have exceeded the groundwater protection standard. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(8). The owner or operator of the CCR unit also shall:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization shall be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to Subsection R315-319-96. Characterization of the release includes the following minimum measures:

(i) Install additional monitoring wells necessary to define the contaminant plume(s);

(ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of Rule R315-319 and the levels at which they are present in the material released;

(iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with Subsection R315-319-95(d)(1); and

(iv) Sample all wells in accordance with Subsection R315-319-95(d)(1) to characterize the nature and extent of the release.

(2) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with Subsection R315-319-95(g)(1). The owner or operator has completed the notifications when they are placed in the facility's operating record as required by Subsection R315-319-105(h)(8).

(3) Within 90 days of finding that any of the constituents listed in appendix IV to Rule R315-319 have been detected at a statistically significant level exceeding the groundwater protection standards the owner or operator shall either:

(i) Initiate an assessment of corrective measures as approved by the Director and as required by Subsection R315-319-96; or

(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration shall be submitted to and has received approval from the Director and supported by a report that includes the factual or evidentiary basis for any conclusions and shall be

certified to be accurate by a qualified professional engineer. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to Section R315-319-95, and may return to detection monitoring if the constituents in appendices III and IV to Rule R315-319 are at or below background as specified in Subsection R315-319-95(e). The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(4) If a successful demonstration has not been made at the end of the 90 day period provided by Subsection R315-319-95(g)(3)(ii), the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under Subsection R315-319-96.

(5) If an assessment of corrective measures is required under Subsection R315-319-96 by either Subsection R315-319-95(g)(3)(i) or (g)(4), and if the CCR unit is an existing unlined CCR surface impoundment as determined by Subsection R315-319-71(a), then the CCR unit is subject to the closure requirements under Subsection R315-319-101(a) to retrofit or close. In addition, the owner or operator shall prepare a notification stating that an assessment of corrective measures has been initiated.

(h) The owner or operator of the CCR unit shall establish a groundwater protection standard for each constituent in appendix IV to Rule R315-319 detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a ground water protection standard has been estaliblished in rule R315-308, the ground water protection standard in Rule R315-308;

(2) For constituents for which a ground water protection standard has not been established in Rule R315-308, the background concentration for the constituent established from wells in accordance with Section R315-319-91; or

(3) For constituents for which the background level is higher than the ground water protection standard identified under Subsection R315-319-95(h)(1), the background concentration.

(i) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-96. Groundwater Monitoring and Corrective Action Assessment of Corrective Measures.

(a) Within 90 days of finding that any constituent listed in appendix IV to Rule R315-319 has been detected at a statistically significant level exceeding the groundwater protection standard defined under Subsection R315-319-95(h), or immediately upon detection of a release from a CCR unit, the owner or operator shall initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures shall be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator shall obtain a certification from a qualified professional engineer attesting that the demonstration is accurate. The 90-day

deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(b) The owner or operator of the CCR unit shall continue to monitor groundwater in accordance with the assessment monitoring program as specified in Subsection R315-319-95.

(c) The assessment under Subsection R315-319-96(a) shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under Subsection R315-319-97 addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator shall place the completed assessment of corrective measures in the facility's operating record. The assessment has been completed when it is placed in the facility's operating record as required by Subsection R315-319-105(h)(10).

(e) The owner or operator shall discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties.

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-97. Groundwater Monitoring and Corrective Action Selection of Remedy.

(a) Based on the results of the corrective measures assessment conducted under Subsection R315-319-96, the owner or operator shall, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in Subsection R315-319-97(b). This requirement applies to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator shall prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator shall prepare a final report describing the selected remedy and how it meets the standards specified in Subsection R315-319-97(b). The remedy and report shall be approved by the Director. The owner or operator shall obtain a certification from a qualified professional engineer that the remedy selected meets the requirements of Section R315-319-97. The report has been completed when it is placed in the operating record as required by Subsection R315-319-105(h)(12).

(b) Remedies shall:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standard as specified pursuant to Subsection R315-319-95(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to Rule R315-319 into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in Subsection R315-319-98(d).

(c) In selecting a remedy that meets the standards of Subsection R315-319-97(b), the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal of contaminant;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for implementing and completing remedial activities. Such a schedule shall require the completion of remedial activities within a reasonable period of time taking into consideration the factors set forth in Subsections R315-319-97 (d)(1) through (6). The owner or operator of the CCR unit shall consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination, as determined by the characterization required under Subsection R315-319-95(g);

(2) Reasonable probabilities of remedial technologies in achieving compliance with the groundwater protection standards established under Subsection R315-319-95(h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(5) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land; and

(vi) The availability of alternative water supplies; and

(6) Other relevant factors as required by the Director.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-98. Groundwater Monitoring and Corrective Action Implementation of the Corrective Action Program.

(a) Within 90 days of selecting a remedy under Subsection R315-319-97, the owner or operator shall initiate remedial activities. Based on the schedule established under Subsection R315-319-97(d) for implementation and completion of remedial activities the owner or operator shall:

(1) Establish and implement a corrective action groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under Subsection R315-319-95;

(ii) Documents the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with the groundwater protection standard pursuant to Subsection R315-319-98(c).

(2) Implement the corrective action remedy selected under Subsection R315-319-97; and

(3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit, and/or potential exposures to human or ecological receptors. Interim

measures shall, to the greatest extent feasible, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection R315-319-97. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix IV of Rule R315-319;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause any of the constituents listed in appendix IV to this part to migrate or be released;

(vi) Potential for exposure to any of the constituents listed in appendix IV to Rule R315-319 as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of Subsection R315-319-97(b) is not being achieved through the remedy selected, the owner or operator shall, with approval of the Director, implement other methods or techniques that could feasibly achieve compliance with the requirements.

(c) Remedies selected pursuant to Subsection R315-319-97 shall be considered complete when:

(1) The owner or operator of the CCR unit demonstrates compliance with the groundwater protection standards established under Subsection R315-319-95(h) has been achieved at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under Subsection R315-319-91 and has received Director approval.

(2) Compliance with the groundwater protection standards established under Subsection R315-319-95(h) has been achieved by demonstrating that concentrations of constituents listed in appendix IV to Rule R315-319 have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in Subsection R315-319-93(f) and (g).

(3) All actions required to complete the remedy have been satisfied.

(d) All CCR that are managed pursuant to a remedy required under Section R315-319-97, or an interim measure required under Subsection R315-319-98(a)(3), shall be managed in a manner that complies with all applicable Utah requirements.

(e) Upon completion of the remedy, the owner or operator shall prepare a notification stating that the remedy has been completed. The notification shall be submitted to and be approved by the Director. The owner or operator shall obtain a certification from a qualified professional engineer attesting that the remedy has been completed in compliance with the requirements of Subsection R315-319-98(c). The report has been completed when it is placed in the operating record as required by Subsection R315-319-105(h)(13).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements

specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-100. Closure and Post-Closure Care Inactive CCR Surface Impoundments.

(a) Except as provided by Subsection R315-319-100(b), inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through 107 applicable to existing CCR surface impoundments.

(b) An owner or operator of an inactive CCR surface impoundment that completes closure of such CCR unit, and meets all of the requirements of either Subsections R315-319-100(b)(1) through (4) or Subsection R315-319-100(b)(5) no later than April 17, 2018, is exempt from all other requirements of Sections R315-319-50 through 107.

(1) Closure by leaving CCR in place. If the owner or operator of the inactive CCR surface impoundment elects to close the CCR surface impoundment by leaving CCR in place, the owner or operator shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system; and

(iv) Minimize the need for further maintenance of the CCR unit.

(2) The owner or operator of the inactive CCR surface impoundment shall meet the requirements of Subsections R315-319-100(b)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-100(b)(3).

(i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes shall be stabilized sufficient to support the final cover system.

(3) The owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-100 (b)(3)(i), or the requirements of an alternative final cover system specified in Subsection R315-319-100(b)(3)(ii).

(i) The final cover system shall be designed and constructed to meet the criteria specified in Subsections R315-319-100(b)(3)(i)(A) through (D).

(A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} centimeters/second, whichever is less.

(B) The infiltration of liquids through the CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-100(b)(3)(ii)(A) through (C).

(A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-100(b)(3)(i)(A) and (B).

(B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in Subsection R315-319-100(b)(3)(i)(C).

(C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(4) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer stating that the design of the final cover system meets either the requirements of Subsection R315-319-100(b)(3)(i) or (ii).

(5) Closure through removal of CCR. The owner or operator may alternatively elect to close an inactive CCR surface impoundment by removing and decontaminating all areas affected by releases from the CCR surface impoundment. CCR removal and decontamination of the CCR surface impoundment are complete when all CCR in the inactive CCR surface impoundment is removed, including the bottom liner of the CCR unit.

(6) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer that closure of the CCR surface impoundment under either Subsections R315-319-100(b)(1) through (4) or (b)(5) is technically feasible within the timeframe in Subsection R315-319-100(b).

(7) If the owner or operator of the CCR surface impoundment fails to complete closure of the inactive CCR surface impoundment within the timeframe in Subsection R315-319-100(b), the CCR unit shall comply with all of the requirements applicable to existing CCR surface impoundments under Sections R315-319-50 through 107.

(c) Required notices and progress reports. An owner or operator of an inactive CCR surface impoundment that closes in accordance with Subsection R315-319-100(b) shall complete the notices and progress reports specified in Subsections R315-319-100(c)(1) through (3).

(1) No later than December 17, 2015, the owner or operator shall prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment. The notification shall state that the CCR surface impoundment is an inactive CCR surface impoundment closing under the requirements of Subsection R315-319-100(b). The notification shall also include a narrative description of how the CCR surface impoundment will be closed, a schedule for completing closure activities, and the required certifications under Subsections R315-319-100(b)(4) and (6), if applicable.

(2) The owner or operator shall prepare periodic progress reports summarizing the progress of closure implementation, including a description of the actions completed to date, any problems encountered and a description of the actions taken to resolve the

problems, and projected closure activities for the upcoming year. The annual progress reports shall be completed according to the following schedule:

(i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to initiate closure required by Subsection R315-319-100(c)(1).

(ii) The second annual progress report shall be prepared no later than 12 months after completing the first progress report required by Subsection R315-319-100(c)(2)(i).

(iii) The owner or operator has completed the progress reports specified in Subsection R315-319-100 (c)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(2).

(3) The owner or operator shall prepare and place in the facility's operating record a notification of completion of closure of the CCR surface impoundment. The notification shall be submitted within 60 days of completing closure of the CCR surface impoundment and shall include a written certification from a qualified professional engineer stating that the CCR surface impoundment was closed in accordance with the requirements of either Subsections R315-319-100 (b)(1) through (4) or (b)(5).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the internet requirements specified in Subsection R315-319-107(i).

R315-319-101. Closure and Post-Closure Care - Closure or Retrofit of CCR Units.

(a) The owner or operator of an existing unlined CCR surface impoundment, as determined under Subsection R315-319-71(a), is subject to the requirements of Subsection R315-319-101(a)(1).

(1) Except as provided by Subsection R315-319-101(a)(3), if at any time after October 19, 2015 an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) for such CCR unit, within six months of making such determination, the owner or operator of the existing unlined CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with Subsection R315-319-101(a)(1) shall include a statement in the notification required under Subsection R315-319-102(g) or (k)(5) that the CCR surface impoundment is closing or retrofitting under the requirements of Subsection R315-319-101(a)(1).

(3) The timeframe specified in Subsection R315-319-101(a)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Subsection R315-319-103.

(4) At any time after the initiation of closure under Subsection R315-319-101(a)(1), the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of Subsection R315-319-102(k).

(b) The owner or operator of an existing CCR surface impoundment is subject to the requirements of Subsection R315-319-101(b)(1).

(1) Except as provided by Subsection R315-319-101(b)(4), within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in Subsections R315-319-60(a), 61(a), 62(a), 63(a), and 64(a), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by Subsection R315-319-73(e) by the deadlines specified in Subsections R315-319-73(f)(1) through (3) or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with Subsection R315-319-101(b)(1) or (2) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR surface impoundment is closing under the requirements of Subsection R315-319-101(b)(1) or (2).

(4) The timeframe specified in Subsection R315-319-101(b)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Subsection R315-319-103.

(c) The owner or operator of a new CCR surface impoundment is subject to the requirements of Subsection R315-319-101(c)(1).

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by Subsection R315-319-74(e) by the deadlines specified in Subsections R315-319-74(f)(1) through (3) or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Section R315-319-102.

(2) An owner or operator of an new CCR surface impoundment that closes in accordance with Subsection R315-319-101(c)(1) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR surface impoundment is closing under the requirements of Subsection R315-319-101(c)(1).

(d) The owner or operator of an existing CCR landfill is subject to the requirements of Subsection R315-319-101(d)(1).

(1) Except as provided by Subsection R315-319-101(d)(3), within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in Subsection R315-319-64(a), the owner or operator of the CCR unit shall cease placing CCR and non-CCR waste streams into such CCR landfill and close the CCR unit in accordance with the requirements of Section R315-319-102.

(2) An owner or operator of an existing CCR landfill that closes in accordance with Subsection R315-319-101(d)(1) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR landfill is closing under the requirements of Subsection R315-319-101(d)(1).

(3) The timeframe specified in Subsection R315-319-101(d)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Section R315-319-103.

R315-319-102. Closure and Post-Closure Care - Criteria for Conducting the Closure or Retrofit of CCR Units.

(a) Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in Subsections R315-319-102(b) through (j). Retrofit of a CCR surface impoundment shall be completed in accordance with the requirements in Subsection R315-319-102(k).

(b) Written closure plan

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan shall include, at a minimum, the information specified in Subsections R315-319-102(b)(1)(i) through (vi).

(i) A narrative description of how the CCR unit will be closed in accordance with Section R315-319-102.

(ii) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with Subsection R315-319-102(c).

(iii) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with Subsection R315-319-102(d), and the methods and procedures to be used to install the final cover. The closure plan shall also discuss how the final cover system will achieve the performance standards specified in Subsection R315-319-102(d).

(iv) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.

(v) An estimate of the largest area of the CCR unit ever requiring a final cover as required by Subsection R315-319-102(d) at any time during the CCR unit's active life.

(vi) A schedule for completing all activities necessary to satisfy the closure criteria in Section R315-319-102, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in Subsection

R315-319-102(f)(1), the written closure plan shall include the site-specific information, factors and considerations that would support any time extension sought under Subsection R315-319-102(f)(2).

(2) Timeframes for preparing the initial written closure plan

(i) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit shall prepare an initial written closure plan consistent with the requirements specified in Subsection R315-319-102(b)(1).

(ii) New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator shall prepare an initial written closure plan consistent with the requirements specified in Subsection R315-319-102(b)(1).

(iii) The owner or operator has completed the written closure plan when the plan, including the certification required by Subsection R315-319-102(b)(4), has been placed in the facility's operating record as required by Subsection R315-319-105(i)(4).

(3) Amendment of a written closure plan.

(i) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to Subsection R315-319-102 (b)(1) at any time.

(ii) The owner or operator shall amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

(B) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(iii) The owner or operator shall amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator shall amend the current closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written closure plan meets the requirements of Section R315-319-102.

(c) Closure by removal of CCR. An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to Subsection R315-319-95(h) for constituents listed in appendix IV to Rule R315-319.

(d) Closure performance standard when leaving CCR in place

(1) The owner or operator of a CCR unit shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;

(iv) Minimize the need for further maintenance of the CCR unit; and

(v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) Drainage and stabilization of CCR surface impoundments. The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall meet the requirements of Subsections R315-319-102(d)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-102(d)(3).

(i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes shall be stabilized sufficient to support the final cover system.

(3) Final cover system. If a CCR unit is closed by leaving CCR in place, the owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-102(d)(3)(i), or the requirements of the alternative final cover system specified in Subsection R315-319-102(d)(3)(ii).

(i) The final cover system shall be designed and constructed to meet the criteria in Subsections R315-319-102(d)(3)(i)(A) through (D). The design of the final cover system shall be included in the written closure plan required by Subsection R315-319-102(b).

(A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less.

(B) The infiltration of liquids through the closed CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-102(f)(3)(ii)(A) through (D). The design of the final cover system shall be included in the written closure plan required by Subsection R315-319-102(b).

(A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-102(d)(3)(i)(A) and (B).

(B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in Subsection R315-319-102(d)(3)(i)(C).

(C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(iii) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of Section R315-319-102.

(e) Initiation of closure activities. Except as provided for in Subsection R315-319-102(e)(4) and Section R315-319-103, the owner or operator of a CCR unit shall commence closure of the CCR unit no later than the applicable timeframes specified in either Subsection R315-319-102(e)(1) or (2).

(1) The owner or operator shall commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(i) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(ii) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2)(i) Except as provided by Subsection R315-319-102(e)(2)(ii), the owner or operator shall commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(ii) Notwithstanding Subsection R315-319-102(e)(2)(i), the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation shall be supported by, at a minimum, the information specified in Subsections R315-319-102(e)(2)(ii)(A) and (B). The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by Subsection R315-319-105(i)(5) prior to the end of any two-year period.

(A) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(B) Information demonstrating that that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative shall include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in Subsections R315-319-102(e)(2)(ii)(B)(1) through (4) are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(1) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(2) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled, e.g., CCR is not being generated, and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(3) The CCR unit is dedicated to an operating coal-fired boiler, i.e., CCR is being generated; however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(4) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(iii) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by Subsection R315-319-102(e)(2)(i), the owner or operator of the CCR unit shall include with the demonstration required by Subsection R315-319-102(e)(2)(ii) the following statement signed by the owner or operator or an authorized representative:

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

(3) For purposes of Sections R315-319-50 through 107, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(i) Taken any steps necessary to implement the written closure plan required by Subsection R315-319-102(b);

(ii) Submitted a completed application for any required state or agency permit or permit modification; or

(iii) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) The timeframes specified in Subsections R315-319-102(e)(1) and (2) do not apply to any of the following owners or operators:

(i) An owner or operator of an inactive CCR surface impoundment closing the CCR unit as required by Subsection R315-319-100(b);

(ii) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(a);

(iii) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(b);

(iv) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(c); or

(v) An owner or operator of an existing CCR landfill closing the CCR unit as required by Subsection R315-319-101(d).

(f) Completion of closure activities.

(1) Except as provided for in Subsection R315-319-102(f)(2), the owner or operator shall complete closure of the CCR unit:

(i) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(ii) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2)(i) Extensions of closure timeframes. The timeframes for completing closure of a CCR unit specified under Subsection R315-319-102(f)(1) may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by Subsection R315-319-102(b)(1), the demonstration shall include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by Subsection R315-319-105(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(A) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(B) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(C) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(D) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(ii) Maximum time extensions.

(A) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.

(B) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(C) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(iii) In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by Subsection R315-319-102(f)(1), the owner or operator of the CCR unit shall include with the demonstration required by Subsection R315-319-102(f)(2)(i) the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information,

I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) Upon completion, the owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in Subsection R315-319-102(b) and the requirements of Section R315-319-102.

(g) No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator shall prepare a notification of intent to close a CCR unit. The notification shall include the certification by a qualified professional engineer for the design of the final cover system as required by Subsection R315-319-102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(7).

(h) Within 30 days of completion of closure of the CCR unit, the owner or operator shall prepare a notification of closure of a CCR unit. The notification shall include the certification by a qualified professional engineer as required by Subsection R315-319-102(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(8).

(i) Deed notations.

(1) Except as provided by Subsection R315-319-102(i)(4), following closure of a CCR unit, the owner or operator shall record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a CCR unit; and

(ii) Its use is restricted under the post-closure care requirements as provided by Subsection R315-319-104(d)(1)(iii).

(3) Within 30 days of recording a notation on the deed to the property, the owner or operator shall prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(9).

(4) An owner or operator that closes a CCR unit in accordance with Subsection R315-319-102(c) is not subject to the requirements of Subsections R315-319-102(i)(1) through (3).

(j) The owner or operator of the CCR unit shall comply with the closure recordkeeping requirements specified in Subsection R315-319-105(i), the closure notification requirements specified in Subsection R315-319-106(i), and the closure Internet requirements specified in Subsection R315-319-107(i).

(k) Criteria to retrofit an existing CCR surface impoundment.

(1) To retrofit an existing CCR surface impoundment, the owner or operator shall:

(i) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(ii) Comply with the requirements in Subsection R315-319-72.

(iii) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action.

(2) Written retrofit plan

(i) Content of the plan. The owner or operator shall prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan shall include, at a minimum, all of the following information:

(A) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with Section R315-319-102.

(B) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

(C) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

(D) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

(E) A schedule for completing all activities necessary to satisfy the retrofit criteria in Section R315-319-102, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(ii) Timeframes for preparing the initial written retrofit plan.

(A) No later than 60 days prior to date of initiating retrofit activities, the owner or operator shall prepare an initial written retrofit plan consistent with the requirements specified in Subsection R315-319-102(k)(2). For purposes of Sections R315-319-50 through 107, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

(1) Taken any steps necessary to implement the written retrofit plan; and

(2) Submitted a completed application for a permit or permit modification.

(B) The owner or operator has completed the written retrofit plan when the plan, including the certification required by Subsection R315-319-102(k)(2)(iv), has been placed in the facility's operating record as required by Subsection R315-319-105(j)(1).

(iii) Amendment of a written retrofit plan.

(A) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.

(B) The owner or operator shall amend the written retrofit plan whenever:

(1) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

(2) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

(C) The owner or operator shall amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator shall amend the current retrofit plan no later than 30 days following the triggering event.

(iv) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit

plan, including any amendment of the plan, meet the requirements of Section R315-319-102.

(3) Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted shall complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in Subsection R315-319-102(f) or, where applicable, Subsection R315-319-103.

(4) Upon completion, the owner or operator shall obtain a certification from a qualified professional engineer verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in Subsection R315-319-102(k)(2) and the requirements of Section R315-319-102.

(5) No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator shall prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(j)(5).

(6) Within 30 days of completing the retrofit activities specified in Subsection R315-319-102(k)(1), the owner or operator shall prepare a notification of completion of retrofit activities. The notification shall include the certification by a qualified professional engineer as required by Subsection R315-319-102 (k)(4). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(j)(6).

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of Subsection R315-319-102.

(8) The owner or operator of the CCR unit shall comply with the retrofit recordkeeping requirements specified in Subsection R315-319-105(j), the retrofit notification requirements specified in Subsection R315-319-106(j), and the retrofit Internet requirements specified in Subsection R315-319-107(j).

R315-319-103. Closure and Post-Closure Care - Alternative Closure Requirements. The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to Subsection R315-319-101(a), (b)(1), or (d) may continue to receive CCR in the unit provided the owner or operator meets the requirements of either Subsection R315-319-103(a) or (b).

(a)(1) No alternative CCR disposal capacity. Notwithstanding the provisions of Subsection R315-319-101(a), (b)(1), or (d), a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the CCR shall continue to be managed in that CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under Subsection R315-319-103(a)(1), the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under Section R315-319-103;

(ii) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection lasts only as long as no

alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;

(iii) The owner or operator shall remain in compliance with all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR unit shall cease receiving CCR and initiate closure following the timeframes in Subsections R315-319-102(e) and (f).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit shall cease receiving CCR and close in accordance with the timeframes in Subsections R315-319-102(e) and (f).

(b)(1) Permanent cessation of a coal-fired boiler(s) by a date certain. Notwithstanding the provisions of Subsections R315-319-101(a), (b)(1), and (d), a CCR unit may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframes specified in Subsections R315-319-103(b)(2) through (4), but in the interim period, prior to closure of the coal-fired boiler, the facility shall continue to use the CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under this Subsection R315-319-103(b)(1), the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under Section R315-319-103.

(ii) The owner or operator shall remain in compliance with all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action; and

(iii) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler shall cease operation and the CCR surface impoundment shall have completed closure no later than October 17, 2023.

(3) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler shall cease operation, and the CCR surface impoundment shall complete closure no later than October 17, 2028.

(4) For a CCR landfill, the coal-fired boiler shall cease operation, and the CCR landfill shall complete closure no later than April 19, 2021.

(c) Required notices and progress reports. An owner or operator of a CCR unit that closes in accordance with Subsection R315-319-103(a) or (b) shall complete the notices and progress reports specified in Subsections R315-319-103(c)(1) through (3).

(1) Within six months of becoming subject to closure pursuant to Subsection R315-319-101(a), (b)(1), or (d), the owner or operator shall prepare and place in the facility's operating record a notification of intent to comply with the alternative closure

requirements of Section R315-319-103. The notification shall describe why the CCR unit qualifies for the alternative closure provisions under either Subsection R315-319-103(a) or (b), in addition to providing the documentation and certifications required by Subsection R315-319-103(a) or (b).

(2) The owner or operator shall prepare the periodic progress reports required by Subsection R315-319-103(a)(1)(iv) or (b)(1)(iii), in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports shall be completed according to the following schedule:

(i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by Subsection R315-319-103(c)(1).

(ii) The second annual progress report shall be prepared no later than 12 months after completing the first annual progress report. Additional annual progress reports shall be prepared within 12 months of completing the previous annual progress report.

(iii) The owner or operator has completed the progress reports specified in Subsection R315-319-103(c)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(10).

(3) An owner or operator of a CCR unit shall also prepare the notification of intent to close a CCR unit as required by Subsection R315-319-102(g).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the Internet requirements specified in Subsection R315-319-107(i).

R315-319-104. Closure and Post-Closure Care - Post-closure Care Requirements.

(a) Applicability.

(1) Except as provided by either Subsection R315-319-104(a)(2) or (3), Section R315-319-104 applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under Section R315-319-102.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by Subsection R315-319-102(c) is not subject to the post-closure care criteria under Section R315-319-104.

(3) An owner or operator of an inactive CCR surface impoundment that elects to close a CCR unit pursuant to the requirements under Subsection R315-319-100(b) is not subject to the post-closure care criteria under Section R315-319-104.

(b) Post-closure care maintenance requirements. Following closure of the CCR unit, the owner or operator shall conduct post-closure care for the CCR unit, which shall consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under Section R315-319-70, maintaining the integrity and effectiveness of the leachate collection and removal system

and operating the leachate collection and removal system in accordance with the requirements of Section R315-319-70; and

(3) Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of Sections R315-319-90 through 98.

(c) Post-closure care period.

(1) Except as provided by Subsection R315-319-104(c)(2), the owner or operator of the CCR unit shall conduct post-closure care for 30 years.

(2) If at the end of the post-closure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with Section R315-319-95, the owner or operator shall continue to conduct post-closure care until the owner or operator returns to detection monitoring in accordance with Section R315-319-95.

(d) Written post-closure plan

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written post-closure plan and any amendments to the plan. The plan shall include, at a minimum, the information specified in Subsections R315-319-104(d)(1)(i) through (iii).

(i) A description of the monitoring and maintenance activities required in Subsection R315-319-104(b) for the CCR unit, and the frequency at which these activities will be performed;

(ii) The name, address, telephone number, and email address of the person or office to contact about the facility during the post-closure care period; and

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in Sections R315-319-50 through 107. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration shall be certified by a qualified professional engineer, and notification shall be provided to the Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible Internet site.

(2) Deadline to prepare the initial written post-closure plan

(i) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit shall prepare an initial written post-closure plan consistent with the requirements specified in Subsection R315-319-104(d)(1).

(ii) New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator shall prepare an initial written post-closure plan consistent with the requirements specified in Subsection R315-319-104(d)(1).

(iii) The owner or operator has completed the written post-closure plan when the plan, including the certification required by Subsection R315-319-104(d)(4), has been placed in the facility's operating record as required by Subsection R315-319-105(i)(4).

(3) Amendment of a written post-closure plan.

(i) The owner or operator may amend the initial or any subsequent written post-closure plan developed pursuant to Subsection R315-319-104(d)(1) at any time.

(ii) The owner or operator shall amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written post-closure plan in effect; or

(B) After post-closure activities have commenced, unanticipated events necessitate a revision of the written post-closure plan.

(iii) The owner or operator shall amend the written post-closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written post-closure plan. If a written post-closure plan is revised after post-closure activities have commenced for a CCR unit, the owner or operator shall amend the written post-closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written post-closure plan meets the requirements of Section R315-319-104.

(e) Notification of completion of post-closure care period. No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit shall prepare a notification verifying that post-closure care has been completed. The notification shall include the certification by a qualified professional engineer verifying that post-closure care has been completed in accordance with the closure plan specified in Subsection R315-319-104(d) and the requirements of Section R315-319-104. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(13).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the Internet requirements specified in Subsection R315-319-107(i).

R315-319-105. Recordkeeping, Notification, and Posting of Information to the Internet - Recordkeeping Requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall maintain files of all information required by Section R315-319-105 in a written operating record at their facility.

(b) Unless specified otherwise, each file shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

(c) An owner or operator of more than one CCR unit subject to the provisions of Sections R315-319-50 through 107 may comply with the requirements of Section R315-319-105 in one recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

(d) The owner or operator of a CCR unit shall submit to the Director any demonstration or documentation required by Sections R315-319-50 through 107.

(e) Location restrictions. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the demonstrations documenting whether or not the

CCR unit is in compliance with the requirements under Subsections R315-319-60(a), 61(a), 62(a), 63(a), and 64(a), as it becomes available, in the facility's operating record.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information, as it becomes available, in the facility's operating record:

(1) The design and construction certifications as required by Subsections R315-319-70(e) and (f).

(2) The documentation of liner type as required by Subsection R315-319-71(a).

(3) The design and construction certifications as required by Subsections R315-319-72(c) and (d).

(4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by Subsections R315-319-73(a)(1) and 74(a)(1).

(5) The initial and periodic hazard potential classification assessments as required by Subsections R315-319-73(a)(2) and 74(a)(2).

(6) The emergency action plan (EAP), and any amendment of the EAP, as required by Subsections R315-319-73(a)(3) and 74(a)(3), except that only the most recent EAP shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by Subsections R315-319-73(a)(3)(i)(E) and 74(a)(3)(i)(E).

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by Subsections R315-319-73(a)(3)(v) and 74(a)(3)(v).

(9) The history of construction, and any revisions of it, as required by Subsection R315-319-73(c), except that these files shall be maintained until the CCR unit completes closure of the unit in accordance with Section R315-319-102.

(10) The initial and periodic structural stability assessments as required by Subsections R315-319-73(d) and 74(d).

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by Subsections R315-319-73(d)(2) and 74(d)(2).

(12) The initial and periodic safety factor assessments as required by Subsections R315-319-73(e) and 74(e).

(13) The design and construction plans, and any revisions of it, as required by Subsection R315-319-74(c), except that these files shall be maintained until the CCR unit completes closure of the unit in accordance with Section R315-319-102.

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by Subsection R315-319-80(b), except that only the most recent control plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(2) The annual CCR fugitive dust control report required by Subsection R315-319-80(c).

(3) The initial and periodic run-on and run-off control system plans as required by Subsection R315-319-81(c).

(4) The initial and periodic inflow design flood control system plan as required by Subsection R315-319-82(c).

(5) Documentation recording the results of each inspection and instrumentation monitoring by a qualified person as required by Subsection R315-319-83(a).

(6) The periodic inspection report as required by Subsection R315-319-83(b)(2).

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by Subsections R315-319-83(b)(5) and 84(b)(5).

(8) Documentation recording the results of the weekly inspection by a qualified person as required by Subsection R315-319-84(a).

(9) The periodic inspection report as required by Subsection R315-319-84(b)(2).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The annual groundwater monitoring and corrective action report as required by Subsection R315-319-90(e).

(2) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as required by Subsection R315-319-91(e)(1).

(3) The groundwater monitoring system certification as required by Subsection R315-319-91(f).

(4) The selection of a statistical method certification as required by Subsection R315-319-93(f)(6).

(5) Within 30 days of establishing an assessment monitoring program, the notification as required by Subsection R315-319-94(e)(3).

(6) The results of appendices III and IV to Rule R315-319 constituent concentrations as required by Subsection R315-319-95(d)(1).

(7) Within 30 days of returning to a detection monitoring program, the notification as required by Subsection R315-319-95(e).

(8) Within 30 days of detecting one or more constituents in appendix IV to Rule R315-319 at statistically significant levels above the groundwater protection standard, the notifications as required by Subsection R315-319-95(g).

(9) Within 30 days of initiating the assessment of corrective measures requirements, the notification as required by Subsection R315-319-95(g)(5).

(10) The completed assessment of corrective measures as required by Subsection R315-319-96(d).

(11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by Subsection R315-319-96(e).

(12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by Subsection R315-319-97(a), except that the selection of remedy report shall be maintained until the remedy has been completed.

(13) Within 30 days of completing the remedy, the notification as required by Subsection R315-319-98(e).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The notification of intent to initiate closure of the CCR unit as required by Subsection R315-319-100(c)(1).

(2) The annual progress reports of closure implementation as required by Subsections R315-319-100(c)(2)(i) and (ii).

(3) The notification of closure completion as required by Subsection R315-319-100(c)(3).

(4) The written closure plan, and any amendment of the plan, as required by Subsection R315-319-102(b), except that only the most recent closure plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(5) The written demonstration(s), including the certification required by Subsection R315-319-102(e)(2)(iii), for a time extension for initiating closure as required by Subsection R315-319-102(e)(2)(ii).

(6) The written demonstration(s), including the certification required by Subsection R315-319-102(f)(2)(iii), for a time extension for completing closure as required by Subsection R315-319-102(f)(2)(i).

(7) The notification of intent to close a CCR unit as required by Subsection R315-319-102(g).

(8) The notification of completion of closure of a CCR unit as required by Subsection R315-319-102(h).

(9) The notification recording a notation on the deed as required by Subsection R315-319-102(i).

(10) The notification of intent to comply with the alternative closure requirements as required by Subsection R315-319-103(c)(1).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-103(c)(2).

(12) The written post-closure plan, and any amendment of the plan, as required by Subsection R315-319-104(d), except that only the most recent closure plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(13) The notification of completion of post-closure care period as required by Subsection R315-319-104(e).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by Subsection R315-319-102(k)(2), except that only the most recent retrofit plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105 (b).

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures in Subsection R315-319-103.

(3) The annual progress reports required under the alternative requirements as required by Subsection R315-319-103.

(4) The written demonstration(s), including the certification in Subsection R315-319-102(f)(2)(iii), for a time extension for completing retrofit activities as required by Subsection R315-319-102(k)(3).

(5) The notification of intent to initiate retrofit of a CCR unit as required by Subsection R315-319-102(k)(5).

(6) The notification of completion of retrofit activities as required by Subsection R315-319-102(k)(6).

R315-319-106. Recordkeeping, Notification, and Posting of Information to the Internet Notification Requirements.

(a) The notifications required under Subsections R315-319-106(e) through (i) shall be sent to the Director before the close of business on the day the notification is required to be completed. For purposes of Section R315-319-106, before the close of business means the notification shall be postmarked or sent by electronic mail (email). If a notification deadline falls on a weekend or federal holiday, the notification deadline is automatically extended to the next business day.

(b) Reserved

(c) Notifications may be combined as long as the deadline requirement for each notification is met.

(d) Unless otherwise required in Section R315-319-106, the notifications specified in Section R315-319-106 shall be sent to the Director within 30 days of placing in the operating record the information required by Subsection R315-319-105.

(e) Location restrictions. The owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall notify the Director that each demonstration specified under Subsection R315-319-105(e) has been placed in the operating record and on the owner or operator's publicly accessible internet site.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Within 60 days of commencing construction of a new CCR unit, provide notification of the availability of the design certification specified under Subsection R315-319-105(f)(1) or (3). If the owner or operator of the CCR unit elects to install an alternative composite liner, the owner or operator shall also submit to the Director a copy of the alternative composite liner design.

(2) No later than the date of initial receipt of CCR by a new CCR unit, provide notification of the availability of the construction certification specified under Subsection R315-319-105(f)(1) or (3).

(3) Provide notification of the availability of the documentation of liner type specified under Subsection R315-319-105(f)(2).

(4) Provide notification of the availability of the initial and periodic hazard potential classification assessments specified under Subsection R315-319-105(f)(5).

(5) Provide notification of the availability of emergency action plan (EAP), and any revisions of the EAP, specified under Subsection R315-319-105(f)(6).

(6) Provide notification of the availability of documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under Subsection R315-319-105(f)(7).

(7) Provide notification of documentation prepared by the owner or operator recording all activations of the emergency action plan specified under Subsection R315-319-105(f)(8).

(8) Provide notification of the availability of the history of construction, and any revision of it, specified under Subsection R315-319-105(f)(9).

(9) Provide notification of the availability of the initial and periodic structural stability assessments specified under Subsection R315-319-105(f)(10).

(10) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(f)(11).

(11) Provide notification of the availability of the initial and periodic safety factor assessments specified under Subsection R315-319-105(f)(12).

(12) Provide notification of the availability of the design and construction plans, and any revision of them, specified under Subsection R315-319-105(f)(13).

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under Subsection R315-319-105(g)(1).

(2) Provide notification of the availability of the annual CCR fugitive dust control report specified under Subsection R315-319-105(g)(2).

(3) Provide notification of the availability of the initial and periodic run-on and run-off control system plans specified under Subsection R315-319-105(g)(3).

(4) Provide notification of the availability of the initial and periodic inflow design flood control system plans specified under Subsection R315-319-105(g)(4).

(5) Provide notification of the availability of the periodic inspection reports specified under Subsection R315-319-105(g)(6).

(6) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(g)(7).

(7) Provide notification of the availability of the periodic inspection reports specified under Subsection R315-319-105(g)(9).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the annual groundwater monitoring and corrective action report specified under Subsection R315-319-105(h)(1).

(2) Provide notification of the availability of the groundwater monitoring system certification specified under Subsection R315-319-105(h)(3).

(3) Provide notification of the availability of the selection of a statistical method certification specified under Subsection R315-319-105(h)(4).

(4) Provide notification that an assessment monitoring programs has been established specified under Subsection R315-319-105(h)(5).

(5) Provide notification that the CCR unit is returning to a detection monitoring program specified under Subsection R315-319-105(h)(7).

(6) Provide notification that one or more constituents in appendix IV to Rule R315-319 have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under Subsection R315-319-105(h)(8).

(7) Provide notification that an assessment of corrective measures has been initiated specified under Subsection R315-319-105(h)(9).

(8) Provide notification of the availability of assessment of corrective measures specified under Subsection R315-319-105(h)(10).

(9) Provide notification of the availability of the semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report specified under Subsection R315-319-105(h)(12).

(10) Provide notification of the completion of the remedy specified under Subsection R315-319-105(h)(13).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the intent to initiate closure of the CCR unit specified under Subsection R315-319-105(i)(1).

(2) Provide notification of the availability of the annual progress reports of closure implementation specified under Subsection R315-319-105(i)(2).

(3) Provide notification of closure completion specified under Subsection R315-319-105(i)(3).

(4) Provide notification of the availability of the written closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(4).

(5) Provide notification of the availability of the demonstration(s) for a time extension for initiating closure specified under Subsection R315-319-105(i)(5).

(6) Provide notification of the availability of the demonstration(s) for a time extension for completing closure specified under Subsection R315-319-105(i)(6).

(7) Provide notification of intent to close a CCR unit specified under Subsection R315-319-105(i)(7).

(8) Provide notification of completion of closure of a CCR unit specified under Subsection R315-319-105(i)(8).

(9) Provide notification of the deed notation as required by Subsection R315-319-105(i)(9).

(10) Provide notification of intent to comply with the alternative closure requirements specified under Subsection R315-319-105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-105(i)(11).

(12) Provide notification of the availability of the written post-closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(12).

(13) Provide notification of completion of post-closure care specified under Subsection R315-319-105(i)(13).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the written retrofit plan, and any amendment of the plan, specified under Subsection R315-319-105(j)(1).

(2) Provide notification of intent to comply with the alternative retrofit requirements specified under Subsection R315-319-105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by Subsection R315-319-105(j)(3).

(4) Provide notification of the availability of the demonstration(s) for a time extension for completing retrofit activities specified under Subsection R315-319-105(j)(4).

(5) Provide notification of intent to initiate retrofit of a CCR unit specified under Subsection R315-319-105(j)(5).

(6) Provide notification of completion of retrofit activities specified under Subsection R315-319-105(j)(6).

R315-319-107. Recordkeeping, Notification, and Posting of Information to the Internet - Publicly Accessible Internet Site Requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall maintain a publicly accessible Internet site, CCR Web site, containing the information specified in Section R315-319-107. The owner or operator's Web site shall be titled “CCR Rule Compliance Data and Information.”

(b) An owner or operator of more than one CCR unit subject to the provisions of Sections R315-319-50 through 107 may comply with the requirements of Section R315-319-107 by using the same Internet site for multiple CCR units provided the CCR Web site clearly delineates information by the name or identification number of each unit.

(c) Unless otherwise required in Section R315-319-107, the information required to be posted to the CCR Web site shall be made available to the public for at least five years following the date on which the information was first posted to the CCR Web site.

(d) Unless otherwise required in Section R315-319-107, the information shall be posted to the CCR Web site within 30 days of placing the pertinent information required by Subsection R315-319-105 in the operating record.

(e) Location restrictions. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place each demonstration specified under Subsection R315-319-105(e) on the owner or operator's CCR Web site.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) Within 60 days of commencing construction of a new unit, the design certification specified under Subsection R315-319-105(f)(1) or (3).

(2) No later than the date of initial receipt of CCR by a new CCR unit, the construction certification specified under Subsection R315-319-105(f)(1) or (3).

(3) The documentation of liner type specified under Subsection R315-319-105(f)(2).

(4) The initial and periodic hazard potential classification assessments specified under Subsection R315-319-105(f)(5).

(5) The emergency action plan (EAP) specified under Subsection R315-319-105(f)(6), except that only the most recent EAP shall be maintained on the CCR Web site irrespective of the time requirement specified in Subsection R315-319-107(c).

(6) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under Subsection R315-319-105(f)(7).

(7) Documentation prepared by the owner or operator recording any activation of the emergency action plan specified under Subsection R315-319-105(f)(8).

(8) The history of construction, and any revisions of it, specified under Subsection R315-319-105(f)(9).

(9) The initial and periodic structural stability assessments specified under Subsection R315-319-105(f)(10).

(10) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(f)(11).

(11) The initial and periodic safety factor assessments specified under Subsection R315-319-105(f)(12).

(12) The design and construction plans, and any revisions of them, specified under Subsection R315-319-105(f)(13).

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under Subsection R315-319-105(g)(1) except that only the most recent plan shall be maintained on the CCR Web site irrespective of the time requirement specified in Subsection R315-319-107(c).

(2) The annual CCR fugitive dust control report specified under Subsection R315-319-105(g)(2).

(3) The initial and periodic run-on and run-off control system plans specified under Subsection R315-319-105(g)(3).

(4) The initial and periodic inflow design flood control system plans specified under Subsection R315-319-105(g)(4).

(5) The periodic inspection reports specified under Subsection R315-319-105(g)(6).

(6) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(g)(7).

(7) The periodic inspection reports specified under Subsection R315-319-105(g)(9).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The annual groundwater monitoring and corrective action report specified under Subsection R315-319-105(h)(1).

(2) The groundwater monitoring system certification specified under Subsection R315-319-105(h)(3).

(3) The selection of a statistical method certification specified under Subsection R315-319-105(h)(4).

(4) The notification that an assessment monitoring programs has been established specified under Subsection R315-319-105(h)(5).

(5) The notification that the CCR unit is returning to a detection monitoring program specified under Subsection R315-319-105(h)(7).

(6) The notification that one or more constituents in appendix IV to Rule R315-319 have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under Subsection R315-319-105(h)(8).

(7) The notification that an assessment of corrective measures has been initiated specified under Subsection R315-319-105(h)(9).

(8) The assessment of corrective measures specified under Subsection R315-319-105(h)(10).

(9) The semiannual reports describing the progress in selecting and designing remedy and the selection of remedy report specified under Subsection R315-319-105(h)(12), except that the selection of the remedy report shall be maintained until the remedy has been completed.

(10) The notification that the remedy has been completed specified under Subsection R315-319-105(h)(13).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The notification of intent to initiate closure of the CCR unit specified under Subsection R315-319-105(i)(1).

(2) The annual progress reports of closure implementation specified under Subsection R315-319-105(i)(2).

(3) The notification of closure completion specified under Subsection R315-319-105(i)(3).

(4) The written closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(4).

(5) The demonstration(s) for a time extension for initiating closure specified under Subsection R315-319-105(i)(5).

(6) The demonstration(s) for a time extension for completing closure specified under Subsection R315-319-105(i)(6).

(7) The notification of intent to close a CCR unit specified under Subsection R315-319-105(i)(7).

(8) The notification of completion of closure of a CCR unit specified under Subsection R315-319-105(i)(8).

(9) The notification recording a notation on the deed as required by Subsection R315-319-105(i)(9).

(10) The notification of intent to comply with the alternative closure requirements as required by Subsection R315-319-105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-105(i)(11).

(12) The written post-closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(12).

(13) The notification of completion of post-closure care specified under Subsection R315-319-105(i)(13).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The written retrofit plan, and any amendment of the plan, specified under Subsection R315-319-105(j)(1).

(2) The notification of intent to comply with the alternative retrofit requirements as required by Subsection R315-319-105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by Subsection R315-319-105(j)(3).

(4) The demonstration(s) for a time extension for completing retrofit activities specified under Subsection R315-319-105(j)(4).

(5) The notification of intent to retrofit a CCR unit specified under Subsection R315-319-105(j)(5).

(6) The notification of completion of retrofit activities specified under Subsection R315-319-105(j)(6).

Appendix III to Rule R315-319 - Constituents for Detection Monitoring

Common name[1]
Boron
Calcium
Chloride
Fluoride
pH
Sulfate
Total Dissolved Solids (TDS)

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

Appendix IV to Rule R315-319 - Constituents for Assessment Monitoring

Common name[1]

Antimony
Arsenic
Barium
Beryllium
Cadmium
Chromium
Cobalt
Fluoride
Lead
Lithium
Mercury
Molybdenum
Selenium
Thallium
Radium 226 and 228 combined

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[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

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

R315-310. Permit Requirements for Solid Waste Facilities.

R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) New and existing Class I, II, III, IV, V,[~~ and~~] VI, and coal combustion residual (CCR) Landfills and coal combustion residual surface impoundments;

(b) Class I, II, III, IV, V, and VI Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);

(c) incinerator facilities that are regulated by Rule R315-306;

(d) land treatment disposal facilities that are regulated by Rule R315-307; and

(d) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The requirements of [~~Rule R315-310~~]Sections R315-310-2 through 12 apply to each existing and new solid waste facility[~~, for which a permit is required~~]as indicated.

(a) The Director may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.

(b) The owner or operator, or both, where the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310;

(ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and

(iii) not accept waste at the solid waste facility prior to receiving the approval required by Subsection R315-301-5(1).

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Director for the desired class, or subclass, of landfill.

(5) Any facility that is in operation at the time that a permit is required for the facility by Subsection R315-310-1(a) and has submitted a permit application within six months of the date the facility became subject to the permit requirements of Subsection R315-310-1(a) may continue to operate during the permit review period but must meet all applicable requirements of rules R315-301 through 320 unless an alternative requirement has been approved by the Director.

R315-310-12. Contents of a Permit Application for a New or Expanding coal combustion residual landfill and coal combustion residual surface impoundment.

Each application for a coal combustion residual landfill and coal combustion residual surface impoundment permit shall contain the information required in Subsections R315-310-3(1)(a) and (k), and Section R315-319.

KEY: solid waste management, waste disposal
Date of Enactment or Last Substantive Amendment: April 25, 2013
Notice of Continuation: February 13, 2013
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 40 CFR 258

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE
Energy*Solutions* LLC
March 10, 2016

What is the issue before the Board?	On February 18, 2016, Energy*Solutions* LLC requested a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to dispose of lithium-thionyl chloride batteries following macroencapsulation.
What is the historical background or context for this issue?	The Mixed Waste Facility has received one 5-gallon bucket of spent lithium-thionyl chloride batteries. The land disposal regulations require that batteries containing lithium be deactivated prior to land disposal. Macreoencapsulation technology requires the waste to be classified as debris (which is a material exceeding 60 mm) before that technology can be used. Energy*Solutions* proposes to treat this 5-gallon bucket by macroencapsulation (even though the batteries are smaller than 60 mm) in the Mixed Waste Landfill Cell. This method will isolate the waste from precipitation and potential leaching. This request is based on the fact that, in order to deactivate the batteries, they would first need to be shredded. This method of treatment creates additional hazards to the employees without the assurance that the batteries, based on their size and shape, would be shredded. Final disposal of the waste will occur in the Mixed Waste Landfill Cell at the Mixed Waste Facility. A notice for public comment was published in the Salt Lake Tribune, the Deseret News and the Tooele County Transcript Bulletin on March 1, 2016. The comment period began March 1, 2016 and will end March 30, 2016.
What is the governing statutory or regulatory citation?	Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act and R315-2-13 of the Utah Administrative Code. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-13-1 (40 CFR 268.44(h)(2) by reference).
Is Board action required?	No. This is an informational item before the Board.
What is the Division Director's recommendation?	The Director will provide a recommendation at the next Board meeting.
Where can more information be obtained?	For technical questions, please call Otis Willoughby (801) 536-0220. For legal questions, please call Raymond Wixom at (801) 536-0290.

DSHW-2016-006646
Attachment: DSHW-2016-005942

ENERGYSOLUTIONS

DSHW-2016-005942

February 18, 2016

CD16-0034
RECEIVED
FEB 18 2016

Mr. Scott T. Anderson
Director
Division of Solid and Hazardous Waste
P.O. Box 144880
Salt Lake City, UT 84114-4880

Subject: EPA ID Number UTD982598898
Request for a Site-Specific Treatment Variance
Treatment of Lithium Batteries

Dear Mr. Anderson:

Energy*Solutions* LLC hereby requests an exemption from the treatment standards of 40 CFR 268.40(a)(2) for lithium-thionyl chloride batteries. In accordance with Division of Waste Management and Radiation Control guidance and the associated Material Safety Data Sheet, the batteries retain the characteristic hazardous waste codes of ignitability (D001) and reactivity (D003).

This request is submitted in accordance with R315-13-1 (40 CFR 268.44 incorporated by reference), which may allow a site-specific variance from an applicable treatment standard provided the following condition is met:

> *40 CFR 268.44(h)(2) It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible.*

This request is submitted in accordance with the requirements of 40 CFR 260.20(b).

40 CFR 260.20(b)(1): This petition is being submitted by

Energy*Solutions* LLC
423 West 300 South, Suite 200
Salt Lake City, UT 84101

40 CFR 260.20(b)(2): Energy*Solutions* requests approval to macroencapsulate approximately one cubic foot of lithium-thionyl chloride batteries that retain the

characteristic codes D001 and D003. All actions requested in this variance will be performed in accordance with Energy*Solutions*' State-issued Part B Permit.

40 CFR 260.20(b)(3): Energy*Solutions* proposes that the batteries, after acceptance at the facility in accordance with Energy*Solutions*' State-issued Part B Permit, be macroencapsulated in accordance with permit requirements and disposed in the Mixed Waste Landfill Cell.

40 CFR 260.20(b)(4): The need and justification for this action are as follows.

This variance is being requested for one 5-gallon bucket of spent lithium-thionyl chloride batteries that retain characteristic codes from Energy*Solutions* generator 9113-01. In accordance with R315-13-1 (40 CFR 268.40 incorporated by reference), the batteries are required to be "deactivated" (DEACT) prior to disposal.

The most applicable method of deactivation would be macroencapsulation of the waste to isolate the waste (and its characteristics) from the environment. The macroencapsulation technology requires the waste to be classified as debris which is defined as a solid material exceeding 60 mm (~2.36 inches) in any dimension. However, the batteries have a maximum length less than two inches; therefore, they do not meet the definition of debris.

To deactivate the waste without using macroencapsulation would require the batteries be shredded, in order to release the characteristic contents from the battery enclosure, and the resulting fluff treated with chemicals to create a non-characteristic monolith. This method of treatment creates additional hazards by exposing the ignitable and reactive nature of the batteries to the atmosphere, causing potential unnecessary risks to personnel and the environment. Further, due to their size and shape, it is unlikely all of the batteries would be opened during the shredding process and a portion of the batteries would not be treated to their characteristic core.

Rather than risking the consequences of shredding, Energy*Solutions* proposes to macroencapsulate the batteries even though they do not meet the size requirement of debris for macroencapsulation. Macroencapsulation is a permitted process utilized at the Clive facility that significantly reduces the potential for migration (leaching) of waste. Macroencapsulation requires less handling of the waste, particular the hazardous internal

portion of the waste, and creates a final form for disposal that is protective of human health and the environment.

Energy*Solutions* requests that a variance be granted to allow the macroencapsulation treatment of approximately one cubic foot of hazardous lithium-thionyl chloride batteries that do not meet the size requirement for debris as is required for macroencapsulation.

This waste is an ongoing waste stream from this generator who expects to have a minimal volume of lithium-thionyl chloride batteries for disposal each year. This variance was previously submitted to the Director in a letter dated December 16, 2014 (CD14-0284) and was approved by the Solid and Hazardous Waste Board on February 12, 2015.

The name, phone number, and address of the person who should be contacted to notify Energy*Solutions* of decisions by the Director is:

Mr. Vern Rogers
Manager, Compliance and Permitting
Energy*Solutions* LLC
423 West 300 South, Suite 200
Salt Lake City, UT 84101
(801) 649-2000

Should there be any questions to this request, please contact me at 801-649-2144.

Sincerely,

Timothy L. Orton

Timothy L. Orton, P.E.
Environmental Engineer

cc: Otis Willoughby, DSHW

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
Executive Summary
REQUEST FOR A SITE-SPECIFIC TREATMENT VARIANCE
EnergySolutions LLC
March 10, 2016

What is the issue before the Board?	On January 22, 2016, EnergySolutions LLC submitted a request for a site-specific treatment variance from the Utah Hazardous Waste Management Rules to dispose of High Concentration Arsenic Waste following macroencapsulation.
What is the historical background or context for this issue?	The Mixed Waste Facility has received approximately 105 cubic feet of Natural Gas Sweetener Filter Media. This material, made of clay pellets, retains hazardous waste codes for arsenic, cadmium and benzene. EnergySolutions proposes to treat this waste by macroencapsulation in the Mixed Waste Landfill Cell following chemical stabilization of the other contaminants. This request is based on the fact that the facility has attempted a variety of treatment formulas and has been unsuccessful in attaining treatment levels for the arsenic. The other contaminants have been treated below Land Disposal Restriction levels. The facility proposes to treat the final waste form with its in-cell macroencapsulation process. This method will isolate the waste from precipitation and potential leaching. A notice for public comment was published in the *Salt Lake Tribune*, the *Deseret News* and the *Tooele County Transcript Bulletin* on March 1, 2016. The comment period began March 1, 2016, and will end March 30, 2016.
What is the governing statutory or regulatory citation?	Variances are provided for in 19-6-111 of the Utah Solid and Hazardous Waste Act and R315-2-13 of the Utah Administrative Code. This is a one-time site-specific variance from an applicable treatment standard as allowed by R315-13-1 (40 CFR 268.44(h)(2) by reference).
Is Board action required?	No. This is an informational item before the Board.
What is the Division/Director's recommendation?	The Director will provide a recommendation at the next Board meeting.
Where can more information be obtained?	For technical questions, please contact Otis Willoughby (801) 536-0220. For legal questions, please contact Raymond Wixom at (801) 536-0290.

DSHW-2016-006162
Attachment: DSHW-2016-002241

ENERGYSOLUTIONS

Div of Waste Management
and Radiation Control

JAN 22 2016

DSHW - 2016 - 002241

January 22, 2016

CD16-0019
RECEIVED
JAN 22 2016
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Mr. Scott T. Anderson
Director
Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, UT 84114-4880

Subject: EPA ID Number UTD982598898
Request for a Site-Specific Treatment Variance for
High Concentration Arsenic Waste

Dear Mr. Anderson:

Energy*Solutions* hereby requests an exemption from the treatment standards of 40 CFR 268.40(a)(2) for waste that contains high concentrations of arsenic (up to 2500 mg/L) that cannot be treated to the specified treatment standard.

This request is submitted in accordance with R315-13-1 (40 CFR 268.44 incorporated by reference) which allows a site-specific variance from an applicable treatment standard provided the following condition is met:

> 40 CFR 268.44(h)(1) It is not physically possible to treat the waste to the level specified in the treatment standard.

This request is submitted in accordance with the requirements of 40 CFR 260.20(b).

40 CFR 260.20(b)(1): This petition is being submitted by

> Energy*Solutions* LLC
> 299 South Main Street, Suite 1700
> Salt Lake City, UT 84111

40 CFR 260.20(b)(2): Energy*Solutions* requests approval to stabilize, macroencapsulate and dispose, in Energy*Solutions*' Clive Facility Mixed Waste Landfill Cell, approximately 105 cubic feet of Natural Gas Sweetner Filter Media (clay pellets) that is manifested characteristically hazardous for arsenic (D004), cadmium (D006), and benzene (D018). The stabilization treatment process will meet Universal Treatment Standards (as described in R315-13, which incorporates 40 CFR 268) for all contaminants except arsenic. All actions requested in this variance will be performed in accordance with Energy*Solutions*' State-issued Part B Permit.

40 CFR 260.20(b)(3): Energy*Solutions* proposes that the stabilization treatment residue (which will meet all treatment standards except arsenic) be formed into monoliths and macroencapsulated in accordance with permit requirements, and disposed in the Mixed Waste Landfill Cell.

40 CFR 260.20(b)(4): The need and justification for this action are as follows.

This variance is being requested for approximately 105 cubic feet of Natural Gas Sweetner Filter Media waste that was received on September 25, 2015. The waste was profiled by the generator as a solid material with up to 5% aqueous liquids and contains arsenic at concentrations up to 2,500 mg/L. Upon receipt at the Clive Facility, Permit required samples were collected of both phases of the waste. Results of these analyses detected several metals, as well as benzene and toluene, above treatment standards; arsenic was detected at 69,700 mg/L in the aqueous liquid phase (a small portion of the waste) and 1,800 mg/L in the solid.

Using this data as a baseline, treatability studies were performed on this waste in accordance with Attachment II-1-1, *Waste Analysis Plan and Formula Development for Treatment Wastes*, in Energy*Solutions*' State-issued Part B Permit. Over the course of two months, eight separate treatability studies of increasing intensity were conducted. Both single phase and multiple phase formulas were attempted with all contaminants meeting treatment standards except arsenic. Arsenic was reduced from the baseline concentration to approximately 130 mg/L (a reduction factor of approximately 16) with a formula dilution up to 5:1 reagents to waste. This concentration is greatly reduced from the baseline concentration, but remained greater than 25 times the treatment standard of 5.0 mg/L.

40 CFR 268.44(h)(1) allows a variance if it can be demonstrated that because the "physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method." The treatment standard was developed using a finely grained soil-like material; this filter media is physically different in that it is coarser clay pellets; thereby making it more difficult for intimate reagent-waste contact to treat the high concentration arsenic. Furthermore, the results described above demonstrate that copious amounts of absorbent would be needed to meet the treatment standard, if it could be met. This would bring into question whether actual treatment was occurring or whether dilution was causing the reduction in arsenic concentration.

As an alternative to chemical treatment of arsenic to its treatment standard, Energy*Solutions* proposes to first treat the waste such that all contaminants other than arsenic meet their respective treatment standards and the treated waste is formed into solid monoliths, then macroencapsulate the monoliths in accordance with requirements in Attachment II-1-5, *Macroencapsulation Plan*, of the State-issued Part B Permit. Macroencapsulation is a permitted process that significantly reduces the potential for migration (leaching) of waste. This process would ensure protection of public health and the environment.

Energy*Solutions* requests that a variance be granted to allow macroencapsulation and land disposal of waste that will meet all treatment standards except the treatment standard for arsenic.

The name, phone number, and address of the person who should be contacted to notify Energy*Solutions* of decisions by the Director is:

Mr. Vern C. Rogers
Manager, Compliance and Permitting
Energy*Solutions* LLC
299 South Main Street, Suite 1700
Salt Lake City, UT 84111
(801) 649-2000

Should there be any questions to this request, please contact me at 801-649-2144.

Sincerely,

Timothy L. Orton, P.E.
Environmental Engineer

cc: Don Verbica, DWMRC

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.