



State of Utah

SPENCER J. COX  
Governor

DEIDRE HENDERSON  
Lieutenant Governor

## Department of Environmental Quality

Kimberly D. Shelley  
Executive Director

DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL

Douglas J. Hansen  
Director

A meeting of the Waste Management and Radiation Control Board has been scheduled for December 9, 2021 at 1:30 pm at the Utah Department of Environmental Quality, (Multi-Agency State Office Building) Conference Room #1015, 195 North 1950 West, SLC.

(Board members and interested persons may participate electronically/telephonically.)

Join via the Internet: [meet.google.com/gad-sxsd-uvs](https://meet.google.com/gad-sxsd-uvs)

Join via the Phone: (US) +1 978-593-3748 PIN: 902 672 356#

### AGENDA

- I. Call to Order.
- II. Public Comments on Agenda Items.
- III. Declarations of Conflict of Interest.
- IV. Introduction of new Board member Scott Wardle.
- V. Approval of the meeting minutes for the October 14, 2021 Board meeting .....Tab 1  
(Board Action Item)
- VI. Underground Storage Tanks Update .....Tab 2
- VII. Administrative Rules.....Tab 3
  - A. Approval to proceed with formal rulemaking and public comment period on proposed rule changes to Utah Administrative Code R315-307, Landtreatment Disposal Standards Rule, to clarify the applicability statements to include Director discretion to approve only landtreatment disposal operations that provide an agronomic benefit and remove high-chloride wastes as being allowed for landtreatment disposal because they do not provide an agronomic benefit (Board Action Item).
  - B. Final adoption of proposed rule changes to Utah Administrative Code R315-260, 261, 264, 265, 268, 270, and 273 of the Hazardous Waste Rules to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on December 9, 2019 (84 FR 67202). The final rule amends the Utah hazardous waste rules regarding the management of aerosol cans as a universal waste to keep them equivalent to the federal regulations (Board Action Item).

(Over)

- C. Final adoption of proposed rule changes to Utah Administrative Code R313-16-290, Inspection of Radiation Machines and Facilities Rule of the Radiation Control Rules that amend the inspection frequency found in Table I of Subsection R313-16-290(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities (**Board Action Item**).

VIII. Hazardous Waste Section.....Tab 4

- A. Proposed Stipulation and Consent Order between the Director and Clean Harbors Aragonite, LLC (Information Item).

IX. Open Meetings, Conflicts, Ethics and Records Training (Information Item).  
(Training provided by Raymond Wixom, Assistant Attorney General, Utah Attorney General’s Office)

X. Director’s Report.

XI. Other Business.

- A. Miscellaneous Information Items.
- B. Scheduling of next Board meeting (January 13, 2022).

XII. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Larene Wyss, Office of Human Resources at (801) 536-4284, Telecommunications Relay Service 711, or by email at “[lwys@utah.gov](mailto:lwys@utah.gov)”.

Waste Management and Radiation Control Board Meeting  
Utah Department of Environmental Quality  
Multi-Agency State Office Building, (Conf. Room #1015)  
195 North 1950 West, SLC  
October 14, 2021  
1:30 p.m.

**Board Members participating at Anchor Location:**

Brett Mickelson (Chair), Dennis Riding (Vice-Chair), Richard Codell, Mark Franc, Nathan Rich  
Kim Shelley, Shane Whitney

**Board Members Participating Virtually:** Danielle Endres

**Board Members Excused/Absent:** Steve McIff, Vern Rogers

**UDEQ staff members participating at Anchor Location:**

Jalynn Knudsen, Therron Blatter, Morgan Atkinson, Eric Baiden, Tom Ball, Arlene Lovato, Brad Mauling,  
Bret Randall, Elisa Smith, Otis Willoughby, David Wilson

**Others attending at Anchor Location:** David Cronshaw

**Other UDEQ employees, and interested members of the general public also participated either electronically or telephonically.**

**I. Call to Order.**

Chairman Mickelson called the meeting to order at 1:30 pm; roll call of Board members was conducted (see above).

**II. Public Comments on Agenda Items – None.**

**III. Declarations of Conflict of Interest – None.**

**IV. Approval of the Meeting Minutes for the September 9, 2021 Board Meeting (Board Action Item).**

**It was moved by Dennis Riding and seconded by Shane Whitney and UNANIMOUSLY CARRIED to approve the September 9, 2021 Board meeting minutes.**

**V. Underground Storage Tank Update.**

Therron Blatter, Underground Storage Tank (UST) Branch Manager for 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 August 2021, was \$22,894,296.00. The preliminary estimate of the cash balance of the PST Trust Fund for the end of September 2021, was \$23,363,833.00. The DERR continues to watch the balance of the PST Trust Fund closely to ensure sufficient cash is available to provide coverage of qualified claims for releases.

Mr. Blatter also informed the Board that the annual Actuarial Analysis and Report on the PST Trust Fund has been completed. The cash balance of the PST Trust Fund has continued to trend upward. During the past year, the cash balance of the PST Fund has increased by \$3.67 million dollars. The increased cash balance and the projected costs for site remediation show that if the current trend continues, the negative equity balance is projected to be eliminated by 2024. This projection is five years earlier than what was projected last year. These projections are based on assumptions; including current remediation costs,

projected new claims, and revenues from the petroleum surcharge. These assumptions can change from year to year. With the mandated inclusion of aboveground petroleum storage tanks in the next few years and the expected remediation liability that will come with them, this is a positive development. There were no comments or questions.

## **VI. Administrative Rules.**

### **A. Five-Year Review of Utah Administrative Code Rules R313-15, 21, 24, 30, 34, 35, 37, and 38 (Information Item).**

Tom Ball, Planning and Technical Support Manager of the Division of Waste Management and Radiation Control informed the Board that Utah Administrative Code Radiation Control Rules R313-15 Standards for Protection Against Radiation, R313-21 General Licenses, R313-24 Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements, R313-30 Therapeutic Radiation Machines, R313-34 Requirements for Irradiators, R313-35 Requirements for X-Ray Equipment Used for Non-Medical Applications, R313-37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, and R313-38 Licenses and Radiation Safety Requirements for Well Logging are due for a five year review. If these rules are to continue, a Notice of Continuation (Five-Year Review) must be filed prior to the anniversary of the last five-year review. The anniversary date for these rules is January 17, 2022.

The Utah Administrative Rulemaking Act (Utah Code §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. If an agency determines that a rule needs to be amended or repealed this is done in a separate action.

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 Office of Administrative Rules, before the rule's five-year anniversary date. The form provided by the Office of Administrative Rules requires the following information: 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 Office 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.

The completed forms and copies of the rules listed above along with an Executive Summary were included in the Board's October 14, 2021 Board packet.

The Division is providing this information to keep the Board informed of Five-Year Reviews that have been conducted and being submitted to the Office of Administrative Rules. No Board Action is required.

Mark Franc asked if any recommend changes/updates will be proposed to any of these rules. Mr. Ball stated that after the review of the rules was conducted, the Division determined that no rule making actions are needed. However, in the future, some rule making actions may occur on some of the rules as a result of NRC rule changes; but there will not be any rulemaking actions based on the Divisions review of the rules.

### **B. Approval to proceed with formal rulemaking and 30-day public comment period on proposed rule changes to Utah Administrative Code Rule R315-101 of the Hazardous Waste Rules amending the rule**

to include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments based on EPA guidance (**Board Action Item**).

Tom Ball, Planning and Technical Support Manager of the Division of Waste Management and Radiation Control, reviewed the request for the Board's approval to proceed with formal rulemaking and 30-day public comment on proposed rule changes to UAC Hazardous Waste Rule R315-101, Cleanup Action and Risk-Based Closure Standards. The proposed rule changes amend the rule to include the most up-to-date methods and procedures being used by industry to conduct risk assessments and cleanups of contaminated sites based on EPA guidance.

Rule 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 is not the remediation objective.

The procedures in Rule R315-101 also provide for continued management of sites for which risk-based clean closure standards are not met. The current rule contains limited information and is not clear in its requirements, resulting in confusion and inconsistent interpretations among the regulated community. The revised rule provides consistency in interpretations and requirements needed to conduct risk assessments.

Mr. Ball reviewed some of the major changes in the rule that include: providing several available approaches for conducting risk assessments allowing regulated entities to choose the approach that best fits their situation; changes to adequately address groundwater at all contaminated sites, which is lacking in the current rule; spelling out a hierarchy of toxicological sources that are scientifically defensible for use in risk assessment evaluation; providing more details, requirements and information resources, including a list of guidance documents, that are needed to conduct an acceptable ecological risk assessment; defines what an acceptable risk assessment needs to contain and provides clear risk management options available depending on the level of risk; providing a well-defined interpretation of the term No Further Action (NFA) with regards to the level of risk at a site and the land use exposure scenario; and, clear requirements for drafting a site management plan (SMP) and terminating a SMP. Also, there is a section in the amended rule that contains a list of guidance documents and other resources that are incorporated by reference into the rule and a section that provides clear definitions of terms used in the rule.

The Board is authorized under Subsection 19-6-105 to make rules that establish minimum standards for protection of human health and the environment. The rule changes also meet existing DEQ and state rulemaking procedures.

Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the Utah State Bulletin and conducting a 30-day public comment period. The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the November 1, 2021, Utah State Bulletin the proposed changes to UAC R315-101 and conducting a 30-day public comment period from November 1 to December 1, 2021.

Richard Codell stated that the proposed rule changes sound like a departure and re-tooling of the regulations and from his experience of working on risk-based rules this subject can be a real quagmire and the proposed rule changes may be difficult to pass.

Mr. Ball agreed and stated that this is a very complex rule and anytime you are dealing with risk assessment matters there are a lot of complexities to address. Mr. Ball also agreed that there is a potential for Division to receive comments on the proposed rule changes from the regulated community when typically the Division does not receive comments on proposed rule changes.

Mr. Ball further clarified that most of the proposed rule changes include updating the rule and clarifying ambiguities that currently exist. Mr. Ball stated that if the current rule were placed side-by-side with the amended rule, the amended rule is more extensive and longer than the current rule, primarily because it provides more detail and clarification to assist those who are doing these types of risk assessments to complete clean closures in a way that is protective of human health and the environment. Also, the proposed changes will clarify what necessary documents are needed to be submitted for review, hence eliminating the back and forth of trying to get documents in the format needed to the Division for review.

Mr. Ball informed the Board that if the Division does receive comments during the 30-day public comment period that cause additional rule changes to be made to the proposed rule, the Division will bring those proposed rule changes back to the Board again and then go back out for an additional 30-day public comment period.

Mr. Codell questioned, when does the Division anticipate a first draft will be available for review. Mr. Ball stated that if the Board approves the proposed rule changes, it will be published in the Utah State Bulletin on November 1, 2021. Mr. Ball informed the Board that the Executive Summary, the Rule Analysis Form, and the proposed rule changes (the DRAFT rule) to UAC R315-101, Cleanup Action and Risk-Based Closure Standards were included in the October 14, 2021 Board packet.

Nathan Rich agreed that this is a complex rule and commented that the information presented states these are the “most up-to-date methods and procedures being used by industry on cleanups based on EPA guidance” and asked for clarification regarding that statement. Mr. Rich specifically asked where the EPA guidance is and if there were some model rules that were used to incorporate the rules changes (if they were cut and paste from other rules) or if the Division incorporated the EPA guidance and then wrote the rules or where the proposed rules come from and how they tie into EPA guidance.

Tom Ball deferred the question to Brad Maulding and Eric Baden. Mr. Baiden is the Risk Assessor for the Division of Waste Management and Radiation Control and headed up the committee that drafted the rules.

Mr. Baiden stated the risk assessment procedure follows the EPA risk assessment authorities. The EPA risk assessment methodology is the standard risk assessment procedure that is followed in the USA. Anyone who is doing a risk assessment will follow the EPA Risk Assessment Guidance document.

Mr. Rich questioned if the EPA Risk Assessment Guidance document has been in place for a number of years.

Mr. Baiden confirmed that the EPA Guidance Document has been in place for several years and EPA periodically comes up with updates as needed. Therefore, the proposed rule changes are not based on a rule the Division has invented, the proposed rule changes follow the EPA Risk Assessment Guidance Document, which is the standard that is acceptable for anyone doing risk assessments across the USA.

Mr. Rich stated that it sounds like the Division is condensing the EPA Risk Assessment Guidance Document into a more understandable set of rules. Mr. Baiden confirmed that statement.

Mr. Ball stated that another significant change made to these rules includes the “incorporation by reference” of 42 EPA and other federal agency reference documents.

Mark Franc questioned what spurred the proposed rule changes, was it input from the regulated community, was it input from the EPA or was it a combination of both? He stated that because this is such a wholesale

change in the proposed rules, he wondered if the Division was behind on keeping up to date on these rules and questioned what prompted the proposed rule changes.

Brad Maulding, Corrective Action Section Manager in the Division of Waste Management and Radiation Control, informed the Board that the Division has been working on the proposed rule changes for a number of years. The original rule was created in 1994 and was very skeletal, and because of that many issues have arisen over the years where both internal and external differences of opinion on interpretations have occurred, and so forth. While what we had was a workable rule, it was determined that a better solution would be to take some of those experiences and provide a more detailed rule. In doing so, it has gone from a skeleton rule to a fairly large one, but it's necessary because of the complexities this rule deals with. Furthermore, the Division felt that the proposed rule changes were necessary to provide more detail to those the rule impacts to allow them to have a better understanding of risk assessments. The proposed rule changes are a result of approximately 5-6 years of compilation of a Division committee that met and gathered information to best address this matter. Environmental consultants and other stakeholders have been involved in this project and have provided feedback. The feedback included some stakeholders that prefer the skeleton rule, because they felt like it provides more flexibility, while other stakeholders prefer the added detail as it helps them better understand what is needed to address cleanup standards at the sites they are working on. Mr. Maulding stated that he is anxious to receive additional comments outside the stakeholders the Division has worked with regarding the proposed rule changes.

Dennis Riding stated that it was mentioned that the Division reached out to stakeholders and asked what percentage of stakeholders the Division reached out to. Mr. Maulding stated that it was difficult to characterize stakeholders. The entities that utilize the rule, such as property owners and others, probably about less than 1% were contacted, however, environmental consultants and those that have knowledge of the rule consisted of a significantly larger percentage. Mr. Maulding further explained the specific stakeholders impacted by the proposed rule changes. Mr. Riding asked if the regulated community is going to be surprised with the proposed rule changes. Mr. Baiden stated that he does not feel that the regulated community would be surprised because nothing has changed, the Division is just providing more detail but is still following the EPA Risk Assessment methodologies.

Mr. Maulding stated that another option would have been to create a guidance document associated with the original rule. However, the Director at that time was not supportive of that approach. He wanted rules in place so that if there were matters where entities were not following proper procedures a mechanism/rules were in place to address those issues.

Mr. Rich stated that there are approximately 41 documents that have been incorporated within the rule, and from his perspective it is necessary to incorporate them into the rule to point to the specific guidance document needed. From his perspective, this makes it clearer for somebody trying to comply with the rule.

Mr. Maulding stated this is a really important rule. Prior to having a risk assessment rule, the regulated community were required to clean-up to background levels, which means not much was happening. Once a risk assessment rule was established, it allowed entities to clean-up a contaminated site to whatever goal they had for it, whether it be residential or commercial. They could leave contamination in place if it met the risk standards for whatever their vision was for the property. With that being said, this rule is critical to the Division.

[During the motion] Board members expressed concern that a 30-day public comment period may not be sufficient time to allow all interested individuals to make meaningful comments. Mr. Ball agreed and stated depending on comments received, there is the potential that the public comment period will be extended.

**It was moved by Nathan Rich and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve proceeding with formal rulemaking and a 30-day public comment period on proposed rule changes to Utah Administrative Code Rule R315-101 of the Hazardous Waste Rules amending the rule to include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments based on EPA guidance.**

**VII. Other Business.**

- A. Miscellaneous Informational Items – None to Report.
- B. Scheduling of next Board meeting (November 18, 2021).

The November 18, 2021 Board meeting was cancelled. The next meeting is scheduled for December 9, 2021 at the Utah Department of Environmental Quality at 1:30 pm.

**VIII. Adjourn.**

The meeting adjourned at 2:00 pm.



| UST STATISTICAL SUMMARY                           |              |              |              |              |              |              |              |              |              |              |              |              |                |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|----------------|
| November 1, 2020 -- October 31, 2021              |              |              |              |              |              |              |              |              |              |              |              |              |                |
| PROGRAM   |              |              |              |              |              |              |              |              |              |              |              |              |                |
|   | November     | December     | January      | February     | March        | April        | May          | June         | July         | August       | September    | October      | (+/-) OR Total |
| Regulated Tanks                                   | 4,127        | 4,130        | 4,144        | 4,144        | 4,145        | 4,136        | 4,146        | 4,139        | 4,142        | 4,140        | 4,128        | 4,136        | 9              |
| Tanks with Certificate of Compliance              | 4,039        | 4,044        | 4,051        | 4,051        | 4,053        | 4,058        | 4,063        | 4,067        | 4,065        | 4,056        | 4,050        | 4,052        | 13             |
| Tanks without COC                                 | 88           | 86           | 93           | 93           | 92           | 78           | 83           | 72           | 77           | 84           | 78           | 84           | (4)            |
| Cumulative Facilities with Registered A Operators | 1,108        | 1,111        | 1,252        | 1,252        | 1,256        | 1,251        | 1,250        | 1,291        | 1,294        | 1,290        | 1,291        | 1,288        | 98.47%         |
| Cumulative Facilities with Registered B Operators | 1,150        | 1,147        | 1,285        | 1,285        | 1,292        | 1,253        | 1,251        | 1,295        | 1,295        | 1,292        | 1,292        | 1,289        | 98.55%         |
| New LUST Sites                                    | 8            | 8            | 5            | 5            | 10           | 5            | 2            | 10           | 8            | 3            | 8            | 5            | 77             |
| Closed LUST Sites                                 | 2            | 6            | 4            | 4            | 16           | 3            | 4            | 17           | 6            | 0            | 9            | 4            | 75             |
| Cumulative Closed LUST Sites                      | 5315         | 5323         | 5329         | 5329         | 5350         | 5352         | 5356         | 5374         | 5378         | 5378         | 5390         | 5397         | 82             |
| FINANCIAL   |              |              |              |              |              |              |              |              |              |              |              |              |                |
|   | November     | December     | January      | February     | March        | April        | May          | June         | July         | August       | September    | October      | (+/-)          |
| Tanks on PST Fund                                 | 2,666        | 2,667        | 2,666        | 2,666        | 2,666        | 2,663        | 2,664        | 2,664        | 2,662        | 2,653        | 2,649        | 2,642        | (24)           |
| PST Claims (Cumulative)                           | 688          | 688          | 688          | 688          | 689          | 690          | 693          | 696          | 701          | 701          | 702          | 702          | 14             |
| Equity Balance                                    | -\$9,462,843 | -\$9,547,189 | -\$8,950,746 | \$8,633,383  | -\$8,709,493 | -\$8,272,438 | -\$7,719,626 | -\$6,964,420 | -\$6,684,027 | -\$5,540,984 | -\$4,033,695 | -\$3,921,878 | \$5,540,965    |
| Cash Balance                                      | \$18,972,437 | \$18,888,091 | \$19,484,534 | \$19,801,897 | \$19,725,787 | \$20,162,842 | \$20,715,654 | \$21,470,860 | \$21,751,253 | \$22,894,296 | \$23,363,833 | \$23,475,650 | \$4,503,213    |
| Loans   | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0            | 0              |
| Cumulative Loans                                  | 121          | 121          | 121          | 121          | 121          | 121          | 121          | 121          | 121          | 121          | 121          | 121          | 0              |
| Cumulative Amount                                 | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$4,738,367  | \$0            |
| Defaults/Amount                                   | 2            | 2            | 2            | 2            | 2            | 2            | 2            | 2            | 2            | 2            | 2            | 2            | 0              |
|   | November     | December     | January      | February     | March        | April        | May          | June         | July         | August       | September    | October      | TOTAL          |
| Speed Memos                                       | 73           | 42           | 48           | 48           | 75           | 42           | 81           | 76           | 82           | 51           | 78           | 100          | 796            |
| Compliance Letters                                | 9            | 14           | 15           | 15           | 18           | 13           | 8            | 7            | 15           | 16           | 21           | 8            | 159            |
| Notice of Intent to Revoke                        | 0            | 0            | 0            | 0            | 0            | 1            | 0            | 0            | 0            | 0            | 0            | 2            | 3              |
| Orders  | 1            | 0            | 0            | 0            | 1            | 0            | 1            | 0            | 0            | 0            | 0            | 0            | 3              |

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD**  
**Executive Summary**  
**Public Comment -- Proposed Rule Changes**  
**UAC R315-307**  
**December 9, 2021**

|   |  |
|---|--|
| <b>What is the issue before the Board?</b>                          | Approval from the Board to proceed with formal rulemaking and public comment on proposed changes to Utah Administrative Code R315-307 to clarify the applicability statements to include Director discretion to approve only landtreatment disposal operations that provide an agronomic benefit and remove high-chloride wastes as being allowed for landtreatment disposal because they do not provide an agronomic benefit.   |
| <b>What is the historical background or context for this issue?</b> | <p>There are no federal standards for land application of solid wastes. The Division has historically interpreted UAC R315-307 as only applicable to wastes that provide an agronomic benefit to the soil. This was always the intent of the rule and is how the Division has applied the rule in the past.</p> <p>The addition of high-chloride wastes to the list of undesirable wastes is also consistent with the historical interpretation of the rule and provides additional clarification.</p> <p>Currently, UAC R315-307-3(2) provides standards to prevent nutrient overload that may inhibit crops from being successful, and UAC R315-307-3(7) limits food-chain crops without Director approval. The proposed changes will clarify that the standards of UAC R315-307 in its entirety should only be utilized when there are agronomic benefits.</p> <p>The Rule Analysis Form with proposed changes to UAC R315-307 follow this Executive Summary.</p> |
| <b>What is the governing statutory or regulatory citation?</b>      | The Board is authorized under Subsection 19-6-105 to make rules that establish minimum standards for protection of human health and the environment for the treatment and disposal of solid waste. The rule changes also meet existing DEQ and state rulemaking procedures.  |
| <b>Is Board action required?</b>                                    | Yes. Board approval is necessary to begin the formal rulemaking process by filing the appropriate documents with the Office of Administrative Rules for publishing the proposed rule changes in the <i>Utah State Bulletin</i> and conducting a public comment period.   |
| <b>What is the Division Director's recommendation?</b>              | The Director recommends the Board approve proceeding with formal rulemaking and public comment by publishing in the January 1, 2022, <i>Utah State Bulletin</i> the proposed changes to UAC R315-307 and conducting a public comment period from January 1 to February 1, 2022.  |
| <b>Where can more information be obtained?</b>                      | Please contact Tom Ball by email at <a href="mailto:tball@utah.gov">tball@utah.gov</a> or by phone at (801) 536-0251.  |

**State of Utah**  
**Administrative Rule Analysis**  
Revised November 2021

| NOTICE OF PROPOSED RULE   |          |                             |
|---|----------|-----------------------------|
| TYPE OF RULE: New ____; Amendment <u>X</u> ____; Repeal ____; Repeal and Reenact ____ |          |                             |
| Title No. - Rule No. - Section No.  |          |                             |
| Utah Admin. Code Ref (R no.):   | R315-307 | Filing ID (Office Use Only) |
| Changed to Admin. Code Ref. (R no.):  | R        |                             |

**Agency Information**

|  |  |                |
|--|--|----------------|
| 1. Department:   | Environmental Quality                  |                |
| Agency:  | Waste Management and Radiation Control |                |
| Room no.:  |  |                |
| Building:  | MASOB                                  |                |
| Street address:  | 195 N. 1950 W.                         |                |
| City, state and zip:   | Salt Lake City, Utah 84116             |                |
| Mailing address:   | PO Box 144880                          |                |
| City, state and zip:   | Salt Lake City, Utah 84114-4880        |                |
| Contact person(s):   |  |                |
| Name:  | Phone:                                 | Email:         |
| Tom Ball   | 801-536-0251                           | tball@utah.gov |
|  |  |                |
|  |  |                |
| Please address questions regarding information on this notice to the agency. |  |                |

**General Information**

|  |
|--|
| <b>2. Rule or section catchline:</b>   |
| R315-307. Landtreatment Disposal Standards   |
| <b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):  |
| <p>The purpose of the change is to clarify the applicability statements to include Director discretion to approve only landtreatment disposal operations that provide an agronomic benefit. This was always the intent of the rule and is how the Division has applied the rule in the past and, to be consistent with that intent, high-chloride wastes will now be listed as undesirable for landtreatment disposal because they do not provide an agronomic benefit.</p> <p>There are no federal standards for land application of solid wastes. The Division has historically interpreted R315-307 as only applicable to wastes that provide an agronomic benefit to the soil. The addition of high-chloride wastes to the list of undesirable wastes is also consistent with the historical interpretation of the rule and provides additional clarification. Currently, R315-307-3(2) provides standards to prevent nutrient overload that may inhibit crops from being successful, and R315-307-3(7) limits food-chain crops without Director approval. The proposed changes will clarify that the standards of R315-307 in its entirety should only be utilized when there are agronomic benefits.</p> |
| <b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):   |
| <p>At Subsection R315-307-1(1) language is added to the applicability statement requiring the wastes approved for disposal under this rule to have a reasonable agronomic benefit to soils.</p> <p>Subsection R315-307-2(d) is being removed from the rules to provide the Division Director with an approval role in regard to industrial solid waste facilities. If an industrial waste proves to have an agronomic benefit, it may be considered for disposal under the rule.</p> <p>High-chloride wastes were added to the list of undesirable wastes in Subsection R315-307-3(1) because they are an inhibitor to crop growth.</p> <p>In addition, the division has corrected typographical and formatting errors in the rule.</p>  |

**Fiscal Information**

|  |
|--|
| <b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b> |
|--|

**A) State budget:**

It is not anticipated that this rule change will result in any cost or savings to the state budget.

**B) Local governments:**

It is not anticipated that this rule change will result in any cost or savings to local governments.

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

There are currently seven facilities permitted to operate under Rule R315-307. It is not anticipated that this rule change will result in any cost or savings to six of the seven facilities. The rule change may result in costs to the seventh facility but because the Division does not have specific information regarding the facility's current costs and revenue, the Division is not able to estimate any cost or benefits.

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

As stated above there are only seven facilities permitted to operate under Rule R315-307 and all seven are small businesses. Therefore, it is not anticipated that this rule change will result in any cost or savings to local governments.

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

It is not anticipated that this rule change will result in any cost or savings to persons other than small businesses, non-small businesses, state or local entities.

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

As stated above, the Division is not able to estimate the compliance costs for persons affected by this rule change.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

It is not possible to estimate the costs or savings that may result from this rule change due to the lack of information available to the Division.

Kimberly D. Shelley, Executive Director

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

| Regulatory Impact Table      |            |            |            |
|------------------------------|------------|------------|------------|
| Fiscal Cost                  | FY2022     | FY2023     | FY2024     |
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Cost</b>     | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Fiscal Benefits</b>       |            |            |            |
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>   | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

**Citation Information****7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

|          |          |          |
|----------|----------|----------|
| 19-6-104 | 19-6-105 | 19-6-108 |
|          |          |          |
|          |          |          |

### Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

|   | First Incorporation |
|---|---------------------|
| Official Title of Materials Incorporated<br>(from title page) |                     |
| Publisher   |                     |
| Date Issued   |                     |
| Issue, or version   |                     |

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

|   | Second Incorporation |
|---|----------------------|
| Official Title of Materials Incorporated<br>(from title page) |                      |
| Publisher   |                      |
| Date Issued   |                      |
| Issue, or version   |                      |

### Public Notice Information

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until** (mm/dd/yyyy): 2/1/2022

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

| On (mm/dd/yyyy): | At (hh:mm AM/PM): | At (place): |
|------------------|-------------------|-------------|
|                  |                   |             |
|                  |                   |             |
|                  |                   |             |
|                  |                   |             |

**10. This rule change MAY become effective on** (mm/dd/yyyy): 2/14/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

### Agency Authorization Information

**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.

|  |                                      |                              |  |
|--|--------------------------------------|------------------------------|--|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date</b><br>(mm/dd/yyyy): |  |
|--|--------------------------------------|------------------------------|--|

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

#### R315-307. Landtreatment Disposal Standards.

##### R315-307-1. Applicability.

(1) These standards apply to any facility that engages in the landtreatment, landfarming, or landspreading disposal of solid waste in a manner that has a reasonable agronomic benefit to soils.

(2) These standards do not apply to:

(a) a facility that uses sewage sludge, woodwaste, or other primarily organic sludge in recycling operations as specified in Section R315-312-4;

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues; or

(c) inert waste, or demolition waste, or

~~(d) industrial solid waste facilities.~~

(3) The landtreatment of domestic sewage sludge and septage is exempt from the requirements of Rule R315-307 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

(4) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in ~~[Subs]~~Section R315-303-2.

(5) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

#### **R315-307-2. Standards for Design.**

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat ~~[all]~~any run-off from a 25 year storm, and divert ~~[all]~~any run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3~~[(6)](7)[(4)]~~.

#### **R315-307-3. Standards for Maintenance and Operation.**

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage, ~~[or]~~ infectious waste, ~~or high-chloride wastes;~~

(2) avoid applying wastes at rates greater than ~~[ten]~~10 times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors, and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and ~~[all]~~any other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Director is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

**KEY: solid waste management, waste disposal**

**Date of Enactment or Last Substantive Amendment: April 25, 2013**

**Notice of Continuation: January 12, 2018**

**Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108**

WASTE MANAGEMENT AND RADIATION CONTROL BOARD  
Executive Summary  
Final Adoption  
Amendments to Hazardous Waste Rules UAC R315-260, UAC R315-261,  
UAC R315-264, UAC R315-265, UAC R315-268, UAC R315-270, and  
UAC R315-273  
December 9, 2021

|   |  |
|---|--|
| <b>What is the issue before the Board?</b>                          | Final approval from the Board is needed to adopt changes to Utah Administrative Code R315-260, 261, 264, 265, 268, 270, and 273 of the hazardous waste rules to incorporate federal regulatory changes promulgated by the Environmental Protection Agency (EPA) and published in the Federal Register on December 9, 2019 (84 FR 67202). The final rule amends the Utah hazardous waste rules regarding the management of aerosol cans as a universal waste to keep them equivalent to the federal regulations.  |
| <b>What is the historical background or context for this issue?</b> | At the Board meeting on September 9, 2021, the Board approved the proposed changes to UAC R315-260, 261, 264, 265, 268, 270, and 273 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published in the October 1, 2021, issue of the Utah State Bulletin (Vol. 2021, No. 19).<br><br>Selected pages from the Utah State Bulletin showing the publication of the proposed changes follow this Executive Summary.<br><br>The public comment period for this rulemaking ended on November 1, 2021. No comments were received. |
| <b>What is the governing statutory or regulatory citation?</b>      | The Board is authorized under Subsection 19-6-105(1)(c) to make rules governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities.<br><br>The rule changes also meet existing DEQ and state rulemaking procedures.   |
| <b>Is Board action required?</b>                                    | Yes. Board approval for final adoption of the rule changes is necessary.   |
| <b>What is the Division Director's recommendation?</b>              | The Director recommends the Board approve final adoption of the changes to UAC R315-260, 261, 264, 265, 268, 270, and 273 as published in the October 1, 2021, issue of the Utah State Bulletin and set an effective date of December 13, 2021.  |
| <b>Where can more information be obtained?</b>                      | Please contact Tom Ball by email at <a href="mailto:tball@utah.gov">tball@utah.gov</a> or by phone at (801) 536-0251.  |

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed September 02, 2021, 12:00 a.m. through September 15, 2021, 11:59 p.m.

Number 2021-19  
October 01, 2021

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Government Operations, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.



Office of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

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**Agency Authorization Information**

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.****R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.****R313-16-290. Inspection of Radiation Machines and Facilities.**

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the [D]director or by independent qualified experts.

(2) Inspections may, at the [D]director's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE 1[+]

| FACILITY TYPE   | MAXIMUM TIME BETWEEN INSPECTIONS |
|---|----------------------------------|
| Hospital or Radiation Therapy Facility  | one year                         |
| Medical or <u>Veterinary</u> Facility using Fluoroscopic or Computed Tomography (CT) Units    | one year                         |
| Medical Facility Using General Radiographic Devices   | two years                        |
| Chiropractic  | two years                        |
| Dental  | five years                       |
| Podiatry  | five years                       |
| Veterinary  | five years                       |
| Industrial Facility with High or Very High Radiation Areas Accessible to Individuals          | one year                         |
| Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes | five years                       |
| Other   | one to five years                |

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the [D]director.

**KEY:** x-rays, inspections

**Date of Last Change:** 2021~~April 13, 2020~~

**Notice of Continuation:** April 8, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-3-104

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

|                                      |                    |                                  |
|--------------------------------------|--------------------|----------------------------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R315-260-10</b> | <b>Filing ID</b><br><b>53912</b> |
|--------------------------------------|--------------------|----------------------------------|

**Agency Information**

|  |  |                |
|--|--|----------------|
| <b>1. Department:</b>  | Environmental Quality                                    |                |
| <b>Agency:</b>   | Waste Management and Radiation Control, Waste Management |                |
| <b>Building:</b>   | MASOB  |                |
| <b>Street address:</b>   | 195 N 1950 W   |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84116                                 |                |
| <b>Mailing address:</b>  | PO Box 144880  |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84114-4880                            |                |
| <b>Contact person(s):</b>  |  |                |
| <b>Name:</b>   | <b>Phone:</b>  | <b>Email:</b>  |
| Tom Ball   | 801-536-0251   | tball@utah.gov |
| Please address questions regarding information on this notice to the agency. |  |                |

**General Information**

|  |
|--|
| <b>2. Rule or section catchline:</b>   |
| R315-260-10. Definitions   |
| <b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>  |
| The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah. |
| <b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>   |
| The change to Section R315-260-10 is the addition of the definition of Aerosol Can and an update to the definition of Universal Waste. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.  |

## Fiscal Information

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

#### A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the Division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

#### B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with the rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

#### E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to the rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

#### G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

##### Regulatory Impact Table

| Fiscal Cost              | FY2022     | FY2023     | FY2024     |
|--------------------------|------------|------------|------------|
| State Government         | \$0        | \$0        | \$0        |
| Local Governments        | \$0        | \$0        | \$0        |
| Small Businesses         | \$0        | \$0        | \$0        |
| Non-Small Businesses     | \$0        | \$0        | \$0        |
| Other Persons            | \$0        | \$0        | \$0        |
| <b>Total Fiscal Cost</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Fiscal Benefits</b>   |            |            |            |

|   |            |            |            |
|---|------------|------------|------------|
| State Government  | \$0        | \$0        | \$0        |
| Local Governments   | \$0        | \$0        | \$0        |
| Small Businesses  | \$0        | \$0        | \$0        |
| Non-Small Businesses  | \$0        | \$0        | \$0        |
| Other Persons   | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>B) Department head approval of regulatory impact analysis:</b>   |            |            |            |
| The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis. |            |            |            |

**Citation Information**

|   |                  |                  |
|---|------------------|------------------|
| <b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b> |                  |                  |
| Section 19-6-104  | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4  |                  |                  |

**Public Notice Information**

|   |            |
|---|------------|
| <b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.) |            |
| <b>A) Comments will be accepted until:</b>  | 11/01/2021 |

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on:</b>   | 12/13/2021 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10. |            |

**Agency Authorization Information**

|  |                                      |              |            |
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| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
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**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**

**R315-260. Hazardous Waste Management System.**

**R315-260-10. Definitions.**

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

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

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

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

(2) "Acute hazardous waste" means hazardous wastes that meet the listing criteria in Subsection R315-261-11(a)(2) and therefore are either listed in Section R315-261-31 with the assigned hazard code of (H) or are listed in Subsection R315-261-33(e).

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

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

(5) "Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

([5]6) "AES filing compliance date" means the date that EPA announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

([6]7) "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

([7]8) "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under Subsection R315-261-4(j), and accumulates the waste for more than ten days.

([8]9) "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under Rules R315-260 through R315-266, R315-268, R315-270, and R315-273.

([9]10) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

([10]11) "Ancillary equipment" means any device including[~~;~~ but not limited to,] such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to [a] storage or treatment tank[~~(s)~~], between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

([11]12) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

([12]13) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit[; i.e.,] that is part of a facility, [e.g.]for example, the plant manager, superintendent or person of equivalent responsibility.

([13]14) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

([14]15) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

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

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

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

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

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

([15]16) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, [e.g.,]for example a power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

([16]17) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

([17]18) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

([18]19) "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either Section R315-262-16, for small quantity generators, or Section R315-262-17, for large quantity generators. A central accumulation area at an eligible academic entity that chooses to operate under Sections R315-262-200 through R315-262-216 is also

subject to Section R315-262-211 [~~when~~]if accumulating unwanted material or hazardous waste, or both.

([19]20) "Certification" means a statement of professional opinion based upon knowledge and belief.

([20]21) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and [~~all~~]any applicable closure requirements. See also "active portion" and "inactive portion".

([21]22) "Component" means either the tank or ancillary equipment of a tank system.

([22]23) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

([23]24) "Contained" means held in a unit, including a land-based unit as defined in Section R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include[~~, but are not limited to,~~] releases through surface transport by precipitation run-off, releases to soil and ground water, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

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

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

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

([24]25) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

([25]26) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under [~~the provisions of~~]S[~~ubs~~]ections R315-264-1100 through R315-264-1102 or [~~40 CFR~~]Sections R315-265[~~(-)~~]-1100 through R315-265-1102[~~, which are adopted and incorporated by reference~~].

([26]27) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

([27]28) "Corrosion expert" means a person who, by reason of [~~his~~]their knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

([28]29) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

(~~29~~30) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

(~~30~~31) "CRT processing" means conducting ~~all~~ each of the following activities:

- (i) ~~R~~ H receiving broken or intact CRTs; and
- (ii) ~~H~~ H intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- (iii) ~~S~~ S sorting or otherwise managing glass removed from CRT monitors.

(~~31~~32) "Designated facility" means:

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

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

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

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

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

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or R315-265-72(f).

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

(~~32~~33) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsections R315-273-13(a) and (c) and Section R315-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(~~33~~34) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(~~34~~35) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(~~35~~36) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(~~36~~37) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(~~37~~38) "Division" means the Division of Waste Management and Radiation Control.

(~~38~~39) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(~~39~~40) "Electronic import-export reporting compliance date" means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

(~~40~~41) "Elementary neutralization unit" means a device which:

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

(ii) ~~M~~ M meets the definition of tank, tank system, container, transport vehicle, or vessel in Section[s] R315-260-10.

(~~41~~42) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

(~~42~~43) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(~~43~~44) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through R315-261-35 and to each characteristic identified in Sections R315-261-20 through R315-261-24.

(~~44~~45) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

(~~45~~46) "EPA region" means the states and territories found in any one of the following ten regions:

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

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

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

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

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

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

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

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

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

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

(~~46~~47) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-20 and R315-260-21.

(~~47~~48) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

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

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

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

(~~48~~49) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.



([49]50) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of Title R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained ~~all~~ any Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

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

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

([50]51) "Facility" means:

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

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

(iii) Notwithstanding Subsection R315-260-10(c)(48)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

([51]52) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

([52]53) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, rules, regulations or ordinances.

([53]54) "Final closure" means the closure of ~~each~~ hazardous waste management unit[s] at the facility in accordance with ~~any~~ applicable closure requirements so that hazardous waste management activities under Rules R315-264 and R315-265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

([54]55) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

([55]56) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

([56]57) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

([57]58) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261

or whose act first causes a hazardous waste to become subject to regulation.

([58]59) "Ground water" means water below the land surface in a zone of saturation.

([59]60) "Hazard class" means:

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

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

([60]61) "Hazardous secondary material" means a secondary material, ~~e.g.~~ for example, spent material, by-product, or sludge, ~~that~~ which ~~when~~ if discarded, would be identified as hazardous waste under Rule R315-261.

([61]62) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)(59), "generating facility" means ~~any~~ contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

([62]63) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through R315-261-35, or a constituent listed in table 1 of Section R315-261-24.

([63]64) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the ~~same~~ area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

([64]65) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

([65]66) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

([66]67) "Incinerator" means any enclosed device that:

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

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

([67]68) "Incompatible waste" means a hazardous waste which is unsuitable for:

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

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

([68]69) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(~~69~~70) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (i) (~~C~~)cement kilns;
- (ii) (~~L~~)lime kilns;
- (iii) (~~A~~)aggregate kilns;
- (iv) (~~P~~)phosphate kilns;
- (v) (~~C~~)coke ovens;
- (vi) (~~B~~)blast furnaces;
- (vii) (~~S~~)smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;
- (viii) (~~T~~)titanium dioxide chloride process oxidation reactors;
- (ix) (~~M~~)methane reforming furnaces;
- (x) (~~P~~)pulp liquor recovery furnaces;
- (xi) (~~C~~)combustion devices used in the recovery of sulfur values from spent sulfuric acid;

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

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

- (A) (~~T~~)the design and use of the device primarily to accomplish recovery of material products;
- (B) (~~T~~)the use of the device to burn or reduce raw materials to make a material product;
- (C) (~~T~~)the use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
- (D) (~~T~~)the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
- (E) (~~T~~)the use of the device in common industrial practice to produce a material product; and
- (F) (~~O~~)other factors, as appropriate.

(~~70~~71) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(~~71~~72) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(~~72~~73) "Injection well" means a well into which fluids are injected. See also "underground injection".

(~~73~~74) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(~~74~~75) "Installation inspector" means a person who, by reason of ~~his~~their knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(~~75~~76) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of ~~such~~hazardous secondary material.

(~~76~~77) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(~~77~~78) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include~~[-but are not limited to,];~~ fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(~~78~~79) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(~~79~~80) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(~~80~~81) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(~~81~~82) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; ~~such~~these facilities are disposal facilities if the waste will remain after closure.

(~~82~~83) "Large quantity generator" is a generator who generates any of the following amounts in a calendar month:

- (i) (~~G~~)greater than or equal to 1,000 kilograms, ~~[2,200 lbs)]~~, of non-acute hazardous waste;~~[-or]~~
- (ii) (~~G~~)greater than ~~[1]one~~ kilogram, ~~[2.2 lbs)]~~, of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); or
- (iii) (~~G~~)greater than 100 kilograms, ~~[220 lbs)]~~, of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(~~83~~84) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(~~84~~85) "Leak~~[-]~~ detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, ~~[e.g.,]~~for example daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(~~85~~86) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(~~86~~87) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

([87]88) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through R315-265.

([88]89) "Manifest tracking number" means: The alphanumeric identification number~~[, i.e.,]~~ that is a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

([89]90) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

([90]91) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

([91]92) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

([92]93) "Monitoring" means ~~[all]~~any procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

([93]94) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

([94]95) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

([95]96) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and R315-265-193(g)(2), a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of Title R315; except, however, for purposes of Subsection R315-265-193(g)(2) and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

([96]97) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

([97]98) "Non-acute hazardous waste" means ~~[all]~~any hazardous wastes that are not acute hazardous waste, as defined in Section R315-260-10.

([98]99) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such

a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

([99]100) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by ~~[the same]~~a person but connected by a right-of-way which ~~[he]~~the person controls and to which the public does not have access, is also considered on-site property.

([100]101) "Open burning" means the combustion of any material without the following characteristics:

(i) ~~[C]~~control of combustion air to maintain adequate temperature for efficient combustion~~[;]~~;

(ii) ~~[C]~~containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion~~[;]~~; and

(iii) ~~[C]~~control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

([101]102) "Operator" means the person responsible for the overall operation of a facility.

([102]103) "Owner" means the person who owns a facility or part of a facility.

([103]104) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and R315-265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the ~~[same]~~facility continue to operate.

([104]105) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains ~~[such]~~the substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through R315-266, R315-268, R315-270, R315-273, R315-15, and R315-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

([105]106) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

([106]107) "Permit" means the plan approval as required by ~~[s]~~Subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

([107]108) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

([108]109) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

([109]110) "Personnel" or "facility personnel" means ~~[all]~~any person~~[s]~~ who works at, or oversees the operations of, a hazardous waste

facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or R315-265.

(~~[(440)]111~~) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) [~~F~~]is a new animal drug under FFDCA [~~s~~]Section 201(w)[~~;~~  
~~or~~];

(ii) [~~F~~]is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug[~~;~~]; or

(iii) [~~F~~]is an animal feed under FFDCA [~~s~~]Section 201(x) that bears or contains any substances described by Subsection R315-260-10(c)(108)(i) or (ii).

(~~[(441)]112~~) "Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.

(~~[(442)]113~~) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(~~[(443)]114~~) "POHC's" means principle organic hazardous constituents.

(~~[(444)]115~~) "Point source" means any discernible, confined, and discrete conveyance, including[~~, but not limited to~~] any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(~~[(445)]116~~) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through R315-261-24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Sections R315-261-20 through R315-261-24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through R315-261-35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

(~~[(446)]117~~) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(~~[(447)]118~~) "Qualified Ground[~~-~~]Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground[~~-~~]water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground[~~-~~]water monitoring and contaminant fate and transport.

(~~[(448)]119~~) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. [~~s~~]Section 6901 et seq.

(~~[(449)]120~~) "Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a

United States waste facility to arrange for the export or import of the wastes.

(~~[(420)]121~~) "Remanufacturing" means processing a higher-value hazardous secondary material [~~in order~~]to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For [~~the purpose of~~]this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(~~[(424)]122~~) "Remediation waste" means [~~all~~]any solid and hazardous wastes, and[~~all~~] any media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

(~~[(422)]123~~) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

(~~[(423)]124~~)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which [~~all or substantially all of~~]the waste or a substantial amount of the waste is removed; and

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

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

(~~[(424)]125~~) "Representative sample" means a sample of a universe or whole, [~~e.g.~~]for example, waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

(~~[(425)]126~~) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(~~[(426)]127~~) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(~~[(427)]128~~) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which [~~all~~]each void[~~s are~~]is filled with water.

(~~[(428)]129~~) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(~~[(429)]130~~) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu[~~/~~]per lb of sludge treated on a wet-weight basis.

(~~[(430)]131~~) "Small Quantity Generator" is a generator who generates the following amounts in a calendar month:

(i) [~~G~~]greater than 100 kilograms, [~~4~~]220 lbs[~~;~~], but less than 1,000 kilograms, [~~2~~]2,200 lbs[~~;~~], of non-acute hazardous waste; and

(ii) [~~L~~]less than or equal to [~~4~~]one kilogram, [~~2~~]2.2 lbs[~~;~~], of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) [~~L~~]less than or equal to 100 kilograms, [~~4~~]220 lbs[~~;~~], of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(~~131~~132) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. [~~Such~~These units include any area at a facility at which solid wastes have been routinely and systematically released.

(~~132~~133) "Solvent-contaminated wipe" means:

(i) A wipe [~~that~~which, after use or after cleaning up a spill, ~~either~~meets one or more of the following criteria:

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

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

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

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

(~~133~~134) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(~~134~~135) "Sorb" means to either adsorb or absorb, or both.

(~~135~~136) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(~~136~~137) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(~~137~~138) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

(~~138~~139) "State" means the state of Utah.

(~~139~~140) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(~~140~~141) "Sump" means any pit or reservoir that meets the definition of tank and those troughs[; or trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(~~141~~142) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(~~142~~143) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed

primarily of non-earthen materials, [~~e.g.~~for example, wood, concrete, steel, plastic, which provide structural support.

(~~143~~144) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(~~144~~145) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin[; or furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(~~145~~146) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

(~~146~~147) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

(~~147~~148) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(~~148~~149) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

(~~149~~150) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body[;], for example, trailer[; or railroad freight car, [~~etc.~~;] is a separate transport vehicle.

(~~150~~151) "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

(~~151~~152) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(~~152~~153)(i) "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) [~~W~~]whether the waste is amenable to the treatment process[;];

(B) what pretreatment, if any, is required[;];

(C) the optimal process conditions needed to achieve the desired treatment[;];

(D) the efficiency of a treatment process for a specific waste or wastes[;]; or

(E) the characteristics and volumes of residuals from a particular treatment process.

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

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

(~~153~~154) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize [~~such~~the waste, or so as to recover energy or material resources from the waste, or so as to render [~~such~~the waste non-hazardous, or less

hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(~~154~~)155) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(~~155~~)156) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

(~~156~~)157) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

(~~157~~)158) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(~~158~~)159) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(~~159~~)160) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(i) [~~B~~]batteries as described in Section R315-273-2;  
 (ii) [~~P~~]pesticides as described in Section R315-273-3;  
 (iii) [~~M~~]mercury-containing equipment as described in Section R315-273-4;

(iv) [~~L~~]lamps as described in Section R315-273-5;

(v) [~~Antifreeze~~]aerosol cans as described in [~~Subsection~~]Section R315-273-6(~~a~~); and

(vi) [~~Aerosol cans~~]antifreeze as described in [~~Subsection~~]Section R315-273-6(~~b~~)7.

(~~160~~)161) [~~Universal waste handler~~]

(i) "Universal waste handler" means:

(A) [~~A~~]a generator of universal waste; or

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

(ii) "Universal waste handler" d[~~P~~]oes not mean:

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

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

(~~161~~)162) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(~~162~~)163) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(~~163~~)164) "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.

(~~164~~)165) Used oil is defined in Subsection 19-6-703(19).

(~~165~~)166) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or

operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

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

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

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

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

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or R315-265-71(a)(2)(v). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(~~166~~)167) "Very small quantity generator" is a generator who generates less than or equal to the following amounts in a calendar month:

(i) [~~400~~]one hundred kilograms, [~~(220 lbs)]~~, of non-acute hazardous waste; [~~and~~]

(ii) [~~1~~]one kilogram, [~~(2.2 lbs)]~~, of acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e); and

(iii) [~~400~~]one hundred kilograms, [~~(220 lbs)]~~, of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(e).

(~~167~~)168) "Vessel" includes [~~every~~]any description of watercraft, used or capable of being used as a means of transportation on the water.

(~~168~~)169) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(~~169~~)170) "Wastewater treatment unit" means a device which:

(i) [~~I~~]is part of a wastewater treatment facility that is subject to regulation under either [~~s~~]Section 402 or Subsection 307(b) of the Clean Water Act; [~~and~~]

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

(iii) [~~M~~]meets the definition of tank or tank system in Section R315-260-10.

(~~170~~)171) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(~~171~~)172) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

([172]173) "Well injection": See "underground injection"

([173]174) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

([174]175) "Zone of engineering control" means an area under the control of the owner<sup>[7]</sup> or operator ~~that~~ which, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

**KEY:** hazardous waste

**Date of Last Change:** 2021[April 13, 2020]

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-1-301; 19-6-105; 19-6-106

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

|                                      |                   |                                  |
|--------------------------------------|-------------------|----------------------------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R315-261-9</b> | <b>Filing ID</b><br><b>53913</b> |
|--------------------------------------|-------------------|----------------------------------|

#### Agency Information

|                             |  |                |
|-----------------------------|--|----------------|
| <b>1. Department:</b>       | Environmental Quality                                    |                |
| <b>Agency:</b>              | Waste Management and Radiation Control, Waste Management |                |
| <b>Building:</b>            | MASOB  |                |
| <b>Street address:</b>      | 195 N 1950 W   |                |
| <b>City, state and zip:</b> | Salt Lake City, UT 84116                                 |                |
| <b>Mailing address:</b>     | PO Box 144880  |                |
| <b>City, state and zip:</b> | Salt Lake City, UT 84114-4880                            |                |
| <b>Contact person(s):</b>   |  |                |
| <b>Name:</b>                | <b>Phone:</b>  | <b>Email:</b>  |
| Tom Ball                    | 801-536-0251   | tball@utah.gov |

Please address questions regarding information on this notice to the agency.

#### General Information

##### 2. Rule or section catchline:

R315-261-9. Requirements for Universal Waste

##### 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah

prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

##### 4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This change updates the rule citations to Rule R315-273 found in Rule R315-261 for aerosol cans and antifreeze because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule. (EDITOR'S NOTE: The proposed amendment to Rule R315-273 is under ID 53918 in this issue, October 1, 2021, of the Bulletin.)

#### Fiscal Information

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

###### A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the Division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

###### B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as

universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule, so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore it is unknown how many persons other than small businesses are complying with this rule, so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule, it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

| Regulatory Impact Table      |            |            |            |
|------------------------------|------------|------------|------------|
| Fiscal Cost                  | FY2022     | FY2023     | FY2024     |
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Cost</b>     | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Fiscal Benefits</b>       |            |            |            |
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>   | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

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

|                  |                  |                  |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4     |                  |                  |

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the



|   |            |
|---|------------|
| agency. See Section 63G-3-302 and Rule R15-1 for more information.) |            |
| <b>A) Comments will be accepted until:</b>                          | 11/01/2021 |

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on:</b>   | 12/13/2021 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10. |            |

#### Agency Authorization Information

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

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

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

##### R315-261-9. Requirements for Universal Waste.

The wastes listed in Section R315-261-9 are exempt from regulation under Rules R315-262 through R315-270 except as specified in Rule R315-273 and therefore are not fully regulated as hazardous waste. The wastes listed in Section R315-261-9 are subject to regulation under Rule R315-273:

- (a) ~~B~~ batteries as described in Section R315-273-2;
- (b) ~~P~~ pesticides as described in Section R315-273-3;
- (c) ~~M~~ mercury-containing equipment as described in Section R315-273-4; ~~and~~
- (d) ~~L~~ lamps as described in Section R315-273-5; ~~and~~
- (e) ~~Antifreeze~~ aerosol cans as described in Subsection R315-273-6(a); ~~and~~
- (f) ~~Aerosol cans~~ antifreeze as described in Subsection R315-273-6(b).

**KEY: hazardous waste**

**Date of Last Change:** ~~2021~~ **September 14, 2020**

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

| NOTICE OF PROPOSED RULE              |                   |                        |
|--------------------------------------|-------------------|------------------------|
| <b>TYPE OF RULE:</b> Amendment       |                   |                        |
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R315-264-1</b> | <b>Filing ID 53914</b> |

#### Agency Information

|                        |  |
|------------------------|--|
| <b>1. Department:</b>  | Environmental Quality                                    |
| <b>Agency:</b>         | Waste Management and Radiation Control, Waste Management |
| <b>Building:</b>       | MASOB  |
| <b>Street address:</b> | 195 N 1950 W   |

|  |                               |                |
|--|-------------------------------|----------------|
| <b>City, state and zip:</b>  | Salt Lake City, UT 84116      |                |
| <b>Mailing address:</b>  | PO Box 144880                 |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84114-4880 |                |
| <b>Contact person(s):</b>  |                               |                |
| <b>Name:</b>   | <b>Phone:</b>                 | <b>Email:</b>  |
| Tom Ball   | 801-536-0251                  | tball@utah.gov |
| Please address questions regarding information on this notice to the agency. |                               |                |

#### General Information

|  |
|--|
| <b>2. Rule or section catchline:</b>   |
| R315-264-1 . General - Purpose, Scope and Applicability  |
| <b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>  |
| The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah. |
| <b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>   |
| This change updates the rule citations to Rule R315-273 found in Rule R315-264 for aerosol cans and antifreeze because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule. (EDITOR'S NOTE: The proposed amendment to Rule R315-273 is under ID 53918 in this issue, October 1, 2021, of the Bulletin.)   |

#### Fiscal Information

|  |
|--|
| <b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>                 |
| <b>A) State budget:</b>  |
| It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment |

because the amendment does not change how the Division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

**B) Local governments:**

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste

as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

**Regulatory Impact Table**

| <b>Fiscal Cost</b>       | <b>FY2022</b> | <b>FY2023</b> | <b>FY2024</b> |
|--------------------------|---------------|---------------|---------------|
| State Government         | \$0           | \$0           | \$0           |
| Local Governments        | \$0           | \$0           | \$0           |
| Small Businesses         | \$0           | \$0           | \$0           |
| Non-Small Businesses     | \$0           | \$0           | \$0           |
| Other Persons            | \$0           | \$0           | \$0           |
| <b>Total Fiscal Cost</b> | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |
| <b>Fiscal Benefits</b>   |               |               |               |
| State Government         | \$0           | \$0           | \$0           |
| Local Governments        | \$0           | \$0           | \$0           |
| Small Businesses         | \$0           | \$0           | \$0           |

|   |            |            |            |
|---|------------|------------|------------|
| Non-Small Businesses  | \$0        | \$0        | \$0        |
| Other Persons   | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>B) Department head approval of regulatory impact analysis:</b>   |            |            |            |
| The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis. |            |            |            |

#### Citation Information

|   |                  |                  |
|---|------------------|------------------|
| <b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b> |                  |                  |
| Section 19-6-104  | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4  |                  |                  |

#### Public Notice Information

|   |            |
|---|------------|
| <b>9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)</b> |            |
| <b>A) Comments will be accepted until:</b>  | 11/01/2021 |

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on:</b>   | 12/13/2021 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10. |            |

#### Agency Authorization Information

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

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

##### R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

##### R315-264-1. General -- Purpose, Scope and Applicability.

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

(b) The standards in Rule R315-264 apply to each owner and operator of facilities that treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or R315-261.

(c) Reserved

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

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

(f) Reserved

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

(1) The owner or operator of a facility permitted under Rules R315-301 through R315-320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Rule R315-264 by Section R315-262-14.

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

(3) A generator accumulating waste on site in compliance with Sections R315-262-14, R315-262-15, R315-262-16, or R315-262-17.

(4) A farmer disposing of waste pesticides from his the farmer's own use in compliance with Section R315-262-70.

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

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

(7) Reserved.

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

(A) a discharge of a hazardous waste;

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

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

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

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

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her their official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or

the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

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

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

(11) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed ~~[below]~~ in Subsections R315-264-1(g)(1)(i) through (vi). These handlers are subject to regulation under Rule R315-273, if handling the following universal wastes:

- (i) batteries as described in Section R315-273-2;
- (ii) pesticides as described in Section R315-273-3;
- (iii) mercury-containing equipment as described in Section R315-273-4;
- (iv) lamps as described in Section R315-273-5;
- (v) ~~[antifreeze]~~ aerosol cans as described in S~~[ubs]~~ection R315-272-6~~(a)~~; and
- (vi) ~~[aerosol cans]~~ antifreeze as described in S~~[ubs]~~ection R315-273-~~6(b)~~].

(12) Reserved.

(13) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 in lieu of Rule R315-264 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(h) The requirements of Rule R315-264 apply to each owner or operator of facilities that treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved.

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

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

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain the

information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and R315-268, and shall be kept accurate and up to date.

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

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

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

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

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

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

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

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

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

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

hazardous waste or hazardous waste constituents which could threaten human health or the environment.

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

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

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

**KEY: hazardous waste, TSD facilities**

**Date of Last Change:** ~~2021~~**September 14, 2020**

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

|                                      |                 |                                  |
|--------------------------------------|-----------------|----------------------------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R315-265</b> | <b>Filing ID</b><br><b>53915</b> |
|--------------------------------------|-----------------|----------------------------------|

### Agency Information

|                             |  |                |
|-----------------------------|--|----------------|
| <b>1. Department:</b>       | Environmental Quality                                    |                |
| <b>Agency:</b>              | Waste Management and Radiation Control, Waste Management |                |
| <b>Building:</b>            | MASOB  |                |
| <b>Street address:</b>      | 195 N 1950 W   |                |
| <b>City, state and zip:</b> | Salt Lake City, UT 84116                                 |                |
| <b>Mailing address:</b>     | PO Box 144880  |                |
| <b>City, state and zip:</b> | Salt Lake City, UT 84114-4880                            |                |
| <b>Contact person(s):</b>   |  |                |
| <b>Name:</b>                | <b>Phone:</b>  | <b>Email:</b>  |
| Tom Ball                    | 801-536-0251   | tball@utah.gov |

Please address questions regarding information on this notice to the agency.

### General Information

#### 2. Rule or section catchline:

R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

#### 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

#### 4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This change updates the rule citations to Rule R315-273 found in Rule R315-265 for aerosol cans and antifreeze because of amendments made to Rule R315-273 in accordance with the final federal regulation. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has incorporated 40 CFR 265.1100 through 40 CFR 265.1102 as Section R315-265-1100 through Section R315-265-1102 as part of an ongoing effort to update Rule R315-265. The Division also corrected typographical and formatting errors in this rule. (EDITOR'S NOTE: The proposed amendment to Rule R315-273 is under ID 53918 in this issue, October 1, 2021, of the Bulletin.)

### Fiscal Information

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

##### A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the Division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

##### B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown

how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule, it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

**Regulatory Impact Table**

| Fiscal Cost                  | FY2022     | FY2023     | FY2024     |
|------------------------------|------------|------------|------------|
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Cost</b>     | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Fiscal Benefits</b>       |            |            |            |
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>   | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

## Citation Information

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

|                  |                  |                  |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4     |                  |                  |

## Public Notice Information

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 11/01/2021

**10. This rule change MAY become effective on:** 12/13/2021

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

## Agency Authorization Information

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

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

#### R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

##### R315-265-1. Incorporation, General -- Purpose, Scope, and Applicability.

40 CFR 265.270 through 265.282, 265.300 through 265.316, 265.340 through 265.352, 265.370 through 265.383, 265.400 through 265.406, 265.430, 265.440 through 265.445, 265.1050 through 265.1064, [265.1100 through 265.1102,] 265.1200 through 265.1202, 265.1300 through 265.1316 and Appendices I and III through VI of 40 CFR 265, 2015 edition, as amended by 81 FR 85827, are adopted and incorporated by reference except that "Director" is substituted for references to "Regional Administrator", and for references to "EPA" or "Environmental Protection Agency" except for references to "EPA identification number" and ~~[where]~~when EPA is used in reference to actions under Subsection R315-268-42(b) and in Subsection R315-265-71(a)(3).

(a) The purpose of Rule R315-265 is to establish minimum standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in Subsection R315-265-1080(b), the standards of Rule R315-265, and of Sections R315-264-552, R315-264-553, and R315-264-554, apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under [s]Section 3005(e) of RCRA

and Section R315-270-10 until either a permit is issued under Rule R315-270 or until applicable Rule R315-265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by [s]Section 3010(a) of RCRA, failed to file Part A of the permit application as required by Subsections R315-270-10 (e) and R315-270-10(g), or both. These standards apply to treatment, storage and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in Rule R315-265 or Rule R315-261.

Comment: As stated in [s]Section 3005(a) of RCRA, after the effective date of regulations under that section, which are Rules R315-270 and R315-124, the treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

(c) The requirements of Rule R315-265 do not apply to the following:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act.

Comment: Rule R315-265 does apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in Subsection R315-265-1(b).

(2) Reserved.

(3) The owner or operator of a POTW that treats, stores, or disposes of hazardous waste.

Comment: The owner or operator of a facility under Subsections R315-265-1(c)(1) through R315-265-1(c)(3) is subject to the requirements of Rule R315-264 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122, or are required by 40 CFR 144.14.

(4) Reserved.

(5) The owner or operator of a facility permitted under Rules R315-301 through R315-320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Rule R315-265 by Section R315-262-14.

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

(7) A generator accumulating waste on[-]site in compliance with applicable conditions for exemption in Sections R315-262-14 through R315-262-17 and Sections R315-262-200 through R315-262-216 and R315-262-230 through R315-262-233, except to the extent the requirements of Rule R315-265 are included in those sections.

(8) A farmer disposing of waste pesticides from ~~[his]~~the farmer's own use in compliance with Section R315-262-70.

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

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in Section R315-268-40, Table Treatment Standards for Hazardous Wastes, or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator shall comply with the requirements set out in Subsection R315-265-17(b).



(11)(i) Except as provided in Subsection R315-265-1(c)(11)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) a discharge of a hazardous waste;

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

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Rule R315-265 shall comply with the applicable requirements of Sections R315-265-30 through R315-265-37 and Sections R315-265-50 through R315-265-56.

(iii) Any person who is covered by Subsection R315-265-1(c)(11)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-265 and Rule R315-124 for those activities.

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

(13) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and Subsection R315-265-17(b)[5] and Sections R315-265-171[5] and R315-265-172 are complied with.

(14) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed ~~below~~ in Subsections R315-265-1(c)(14) (i) through (vi). These handlers are subject to regulation under Rule R315-273, if handling the following universal wastes:

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

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

(iii) mercury-containing equipment as described in Section R315-273-4;

(iv) lamps as described in Section R315-273-5;

(v) ~~antifreeze~~ aerosol cans as described in Subsection R315-273-6~~(a)~~; and

(vi) ~~aerosol cans~~ antifreeze as described in Subsection R315-273-6~~(b)~~7.

(15) Reserved

(16) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 in lieu of Rule R315-265 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(d) The following hazardous wastes shall not be managed at facilities subject to regulation under Rule R315-265.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) the waste is stored in tanks or containers;

(iii) the waste is stored or treated in waste piles that meet the requirements of Subsection R315-264-250(c) as well as other applicable requirements of Sections R315-265-250 through R315-265-260;

(iv) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR 265.352, which is ~~adopted~~ incorporated by reference; or

(v) the waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR 265.383, which is adopted and incorporated by reference.

(e) The requirements of Rule R315-265 apply to owners or operators of facilities which treat, store or dispose of hazardous waste referred to in Rule R315-268, and the Rule R315-268 standards are considered material conditions or requirements of the Rule R315-265 interim status standards.

#### **R315-265-1100. Containment Buildings – Applicability.**

The requirements of Sections R315-265-1100 through R315-265-1102 apply to owners or operators who store or treat hazardous waste in units designed and operated under Section R315-265-1101. The owner or operator is not subject to the definition of land disposal in RCRA Section 3004(k) provided that the unit:

(a) is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of that equipment with containment walls;

(b) has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;

(c) if the unit is used to manage liquids, has:

(1) a primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) a liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) a secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under Subsection R315-265-1101(b)(4);

(d) has controls as needed to prevent fugitive dust emissions; and

(e) is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

#### **R315-265-1101. Containment Buildings – Design and Operating Standards.**

(a) Each containment building shall comply with the following design standards.

(1) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, for example, precipitation, wind, run-on, and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required by Subsection R315-265-1101(b), shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are



exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of that equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. Each surface to be in contact with hazardous wastes shall be chemically compatible with those wastes. The director will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of Subsection R315-265-1101(a)(2). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) they provide an effective barrier against fugitive dust emissions in accordance with Subsection R315-265-1101(c)(1)(iv); and

(ii) the unit is designed and operated in a fashion that assures that wastes will not contact these openings.

(3) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids, the presence of which is determined by the paint filter test, a visual examination, or other appropriate means, the owner or operator shall include,

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier, for example, a geomembrane covered by a concrete wear surface.

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building;

(i) the primary barrier shall be sloped to drain liquids to the associated collection system; and

(ii) liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that can detect failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) constructed with a bottom slope of 1 % or more; and

(B) constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  cm per sec or more and a thickness of 12 inches, 30.5 cm, or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  m<sup>2</sup> per sec or more.

(ii) If treatment is to be conducted in the building, an area in which treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlying

materials and by any equipment used in the containment building. Containment buildings may serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building may serve as an external liner system for a tank, provided it meets the requirements of Subsection R315-265-193(c)(1). In addition, the containment building shall meet the requirements of Subsections R315-265-193 (b) and (c) to be considered an acceptable secondary containment system for a tank.

(4) For existing units other than 90-day generator units, the director may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of Sections R315-265-1100 through R315-265-1102. In making this demonstration, the owner or operator shall:

(i) provide written notice to the director of their request by February 18, 1993 that describes the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) respond to any comments from the director on these plans within 30 days; and

(iii) fulfill the terms of the revised plans, if those plans are approved by the director.

(c) Owners or operators of containment buildings shall comply with the following.

(1) Use controls and practices to ensure containment of the hazardous waste within the unit, and, at a minimum:

(i) maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

(iv) take measures to control fugitive dust emissions so that any openings, doors, windows, vents, cracks, exhibit no visible emissions. In addition, each associated particulate collection device, for example, fabric filter, electrostatic precipitator, shall be operated and maintained with sound air pollution control practices. This state of no visible emissions shall be maintained effectively at any time during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of Subsections R315-265-1101(a), (b), and (c).

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste, for example, upon detection of leakage from the primary barrier, the owner or operator shall:

(A) enter a record of the discovery in the facility operating record;

(B) immediately remove the portion of the containment building affected by the condition from service;

(C) determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) within 7 days after the discovery of the condition, notify the director of the condition, and within 14 working days, provide a written notice to the director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The director will review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing the repairs and cleanup the owner or operator shall notify the director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subsection R315-265-1101(c)(3)(i)(D).

(4) Inspect and record in the facility's operating record at least once each seven days data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(1) design and operate each area in accordance with the requirements enumerated in Subsections R315-265-1101(a) through (c);

(2) take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of Sections R315-265-1100 through R315-265-1102, the director may waive requirements for secondary containment for a permitted containment building if the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and if containment of managed wastes and liquids may be assured without a secondary containment system.

#### **R315-265-1102. Containment Buildings -- Closure and Post-Closure Care.**

(a) At closure of a containment building, the owner or operator shall remove or decontaminate any waste residues, contaminated containment system components, liners, contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless Subsection R315-261-3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet the requirements specified in Sections R315-265-110 through R315-265-120 and R315-265-140 through R315-265-148.

(b) If, after removing or decontaminating any residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection R315-265-1102(a), the owner or operator finds that contaminated subsoils cannot be practicably removed or decontaminated, the owner or operator shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills, 40 CFR 265.310. In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet the requirements for landfills specified in Sections R315-265-110 through R315-265-120 and R315-265-140 through R315-265-148.

**KEY:** hazardous waste, TSD facilities, interim status

**Date of Last Change:** 2021[September 14, 2020]

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

|                                      |                   |                                  |
|--------------------------------------|-------------------|----------------------------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R315-268-1</b> | <b>Filing ID</b><br><b>53916</b> |
|--------------------------------------|-------------------|----------------------------------|

#### **Agency Information**

|                             |  |
|-----------------------------|--|
| <b>1. Department:</b>       | Environmental Quality                                    |
| <b>Agency:</b>              | Waste Management and Radiation Control, Waste Management |
| <b>Building:</b>            | MASOB  |
| <b>Street address:</b>      | 195 N 1950 W   |
| <b>City, state and zip:</b> | Salt Lake City, UT 84116                                 |
| <b>Mailing address:</b>     | PO Box 144880  |
| <b>City, state and zip:</b> | Salt Lake City, UT 84114-4880                            |
| <b>Contact person(s):</b>   |  |
| <b>Name:</b>                | <b>Phone:</b> <b>Email:</b>                              |
| Tom Ball                    | 801-536-0251 tball@utah.gov                              |

Please address questions regarding information on this notice to the agency.

#### **General Information**

##### **2. Rule or section catchline:**

R315-268-1. Land Disposal Restrictions - Purpose, Scope, and Applicability

##### **3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

##### **4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the**

substantive differences between the repealed rule and the reenacted rule):

The change adds aerosol cans to the list of universal wastes that are exempt from being regulated under Sections R315-268-7 and R315-268-50. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.

## Fiscal Information

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

#### A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee this rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

#### B) Local governments:

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore it is unknown how many, if any, local government agencies are complying with the rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule

amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to this rule amendments.

#### G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

| Regulatory Impact Table |        |        |        |
|-------------------------|--------|--------|--------|
| Fiscal Cost             | FY2022 | FY2023 | FY2024 |
| State Government        | \$0    | \$0    | \$0    |
| Local Governments       | \$0    | \$0    | \$0    |

|   |            |            |            |
|---|------------|------------|------------|
| Small Businesses  | \$0        | \$0        | \$0        |
| Non-Small Businesses  | \$0        | \$0        | \$0        |
| Other Persons   | \$0        | \$0        | \$0        |
| <b>Total Fiscal Cost</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Fiscal Benefits</b>  |            |            |            |
| State Government  | \$0        | \$0        | \$0        |
| Local Governments   | \$0        | \$0        | \$0        |
| Small Businesses  | \$0        | \$0        | \$0        |
| Non-Small Businesses  | \$0        | \$0        | \$0        |
| Other Persons   | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>  | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>B) Department head approval of regulatory impact analysis:</b>   |            |            |            |
| The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis. |            |            |            |

**Citation Information**

|   |                  |                  |
|---|------------------|------------------|
| <b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b> |                  |                  |
| Section 19-6-104  | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4  |                  |                  |

**Public Notice Information**

|   |            |
|---|------------|
| <b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.) |            |
| <b>A) Comments will be accepted until:</b>  | 11/01/2021 |
| <b>10. This rule change MAY become effective on:</b>  | 12/13/2021 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of               |            |

|  |
|--|
| Administrative Rules on or before the date designated in Box 10. |
|--|

**Agency Authorization Information**

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.****R315-268. Land Disposal Restrictions.****R315-268-1. Land Disposal Restrictions -- Purpose, Scope, and Applicability.**

(a) Rule R315-268 identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in Rule R315-268 or Rule R315-261, the requirements of Rule R315-268 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) ~~[W]~~where persons have been granted an extension to the effective date of a prohibition under Sections R315-268-20 through R315-268-39 or pursuant to Section R315-268-5, with respect to those wastes covered by the extension;

(2) ~~[W]~~where persons have been granted an exemption from a prohibition pursuant to a petition under Section R315-268-6, with respect to those wastes and units covered by the petition;

(3) ~~[W]~~wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, or 40 CFR 148, are not prohibited if the wastes:

(i) ~~[A]~~are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 146.6(a); and

(ii) ~~[D]~~do not exhibit any prohibited characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24, at the point of injection.

(4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under Rule R315-268, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Section R315-268-40, or are D003 reactive cyanide:

(i) ~~[F]~~the wastes are managed in a treatment system ~~[which]~~that subsequently discharges to waters of the U.S. pursuant to a permit issued under ~~[s]~~Section 402 of the Clean Water Act; ~~[or]~~

(ii) ~~[F]~~the wastes are treated for purposes of the pretreatment requirements of ~~[s]~~Section 307 of the Clean Water Act; or

(iii) ~~[F]~~the wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in Subsection R315-268-37(a); and

(iv) ~~[F]~~the wastes no longer exhibit a prohibited characteristic at the point of land disposal~~[, i.e.,]~~ that is placement in a surface impoundment.

(d) The requirements of Rule R315-268 shall not affect the availability of a waiver under ~~[s]~~Section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

(e) The following hazardous wastes are not subject to any provision of Rule R315-268:

(1) ~~[W]~~ waste generated by very small quantity generators, as defined in Section R315-260-10;

(2) ~~[W]~~ waste pesticides that a farmer disposes of pursuant to Section R315-262-70;

(3) ~~[W]~~ wastes identified or listed as hazardous after November 8, 1984 ~~[for which]~~ that EPA has not promulgated land disposal prohibitions or treatment standards; and

(4) De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations, ~~[e.g.]~~ for example, spills from the unloading or transfer of materials from bins or other containers; leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, are exempt from Sections R315-268-7 and R315-268-50 for the hazardous wastes listed ~~[below]~~ in Subsections R315-268-1(f)(1) through (5). These handlers are subject to regulation under Rule R315-273-~~[-]~~ if handling the following universal wastes:

(1) ~~[B]~~ batteries as described in Section R315-273-2;

(2) ~~[P]~~ pesticides as described in Section R315-273-3;

(3) ~~[M]~~ mercury-containing equipment as described in Section R315-273-4; ~~and~~

(4) ~~[L]~~ lamps as described in Section R315-273-5~~[-]~~; and

(5) aerosol cans as described in Section R315-273-6.

**KEY:** hazardous waste, land disposal restrictions

**Date of Last Change:** 2021~~[September 14, 2020]~~

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** **R315-270-1**

**Filing ID**  
**53917**

#### Agency Information

|                             |  |
|-----------------------------|--|
| <b>1. Department:</b>       | Environmental Quality                                    |
| <b>Agency:</b>              | Waste Management and Radiation Control, Waste Management |
| <b>Building:</b>            | MASOB  |
| <b>Street address:</b>      | 195 N 1950 W   |
| <b>City, state and zip:</b> | Salt Lake City, UT 84116                                 |
| <b>Mailing address:</b>     | PO Box 144880  |
| <b>City, state and zip:</b> | Salt Lake City, UT 84114-4880                            |

#### Contact person(s):

| Name:    | Phone:       | Email:         |
|----------|--------------|----------------|
| Tom Ball | 801-536-0251 | tball@utah.gov |

Please address questions regarding information on this notice to the agency.

#### General Information

##### 2. Rule or section catchline:

R315-270-1. Hazardous Waste Permit Program - Purpose and Scope of These Rules

##### 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

##### 4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The change to this rule adds aerosol cans to the list of universal wastes that handlers and haulers are not required to obtain a hazardous waste permit to manage. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.

#### Fiscal Information

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

###### A) State budget:

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because management hazardous waste as universal waste is optional, it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment

does not significantly change how aerosol cans are managed under this rule.

**B) Local governments:**

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Management of hazardous waste as universal waste is optional and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to this rule amendments.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

**Regulatory Impact Table**

| Fiscal Cost                  | FY2022     | FY2023     | FY2024     |
|------------------------------|------------|------------|------------|
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Cost</b>     | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Fiscal Benefits</b>       |            |            |            |
| State Government             | \$0        | \$0        | \$0        |
| Local Governments            | \$0        | \$0        | \$0        |
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

|   |                   |            |            |
|---|-------------------|------------|------------|
| <b>Net Benefits</b>   | <b>Fiscal \$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>B) Department head approval of regulatory impact analysis:</b>   |                   |            |            |
| The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis. |                   |            |            |

#### Citation Information

|   |                  |                  |
|---|------------------|------------------|
| <b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b> |                  |                  |
| Section 19-6-104  | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4  |                  |                  |

#### Public Notice Information

|   |            |
|---|------------|
| <b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.) |            |
| <b>A) Comments will be accepted until:</b>  | 11/01/2021 |

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on:</b>   | 12/13/2021 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10. |            |

#### Agency Authorization Information

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

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

##### **R315-270. Hazardous Waste Permit Program.**

##### **R315-270-1. Hazardous Waste Permit Program -- Purpose and Scope of These Rules.**

(a) No person shall own, construct, modify, or operate any facility for [the purpose of] treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the [D]director for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by [s]Section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., [s]Section 6921, et seq., and who has submitted a proposed hazardous waste permit as required by Section R315-270-1 and Section 19-6-108 for that facility, may continue to operate that facility without violating Section R315-270-1 until [such time as] the permit is approved or disapproved pursuant to Section R315-270-1.

(b)(1) The [D]director shall review each proposed hazardous waste permit application to determine whether the application will be in accord with Rules R315-260 through R315-266, R315-268, R315-270, and R315-273, and Section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in Section 19-6-108. If, after the receipt of plans, specifications, or other information required under Rule R315-270 and Section 19-6-108 and within the applicable time period of Section 19-6-108, the [D]director determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of Rule R315-270 or other applicable rules, [he]the director shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date that the required information is provided to the [D]director as required by Rule R315-270.

(2) Any permit application that does not meet the requirements of Rules R315-260 through R315-266, R315-268, R315-270, and R315-273 shall be disapproved within the applicable time period specified in Section 19-6-108. If within the applicable time period specified in Section 19-6-108 the [D]director fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the [D]director for a decision or seek judicial relief requiring a decision of approval or disapproval.

(3) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the [D]director sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the [D]director gives notice to a particular facility that it shall submit part B of the application.

(c) Scope of the hazardous waste permit requirement. Section 19-6-108 requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in Rule R315-261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in Section R315-270-2. Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, in accordance with Section R315-265-115, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Subsections R315-270-1(c)(5) and R315-270-1(c)(6), or obtain an enforceable document in lieu of a post-closure permit, as provided under Subsection R315-270-1(c)(7). If a post-closure permit is required, the permit shall address applicable Rule R315-264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under Section R315-270-1.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for the following:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store or dispose of hazardous waste. However, the owner and operator with a Utah or Federal UIC permit, shall be deemed to have a "permit by rule" for the injection well itself if they comply with the requirements of Subsection R315-270-60(b).



(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an National Pollutant Discharge Elimination System (NPDES) permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste shall be deemed to have a "permit by rule" for that waste if they comply with the requirements of ~~[Section]~~Subsection R315-270-60(c).

(2) Specific exclusions and exemptions. The following are not required to obtain a hazardous waste permit~~[?]~~.

(i) A generator who accumulates hazardous waste on-site in compliance with the conditions for exemption provided in Sections R315-262-14, R315-262-15, R315-262-16, and R315-262-17.

(ii) A farmer who disposes of hazardous waste pesticides from their own use as provided in Section R315-262-70.

(iii) A person who owns or operates facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulation under Rule R315-270 by Section R315-261-4 or Section R315-262-14, very small quantity generator exemption.

(iv) An owner or operator of totally enclosed treatment facilities as defined in Section R315-260-10.

(v) An owner and operator of one or more elementary neutralization units or wastewater treatment units as defined in Section R315-260-10.

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

(vii) A person adding absorbent material to waste in a container, as defined in Section R315-260-10, and a person adding waste to absorbent material in a container, ~~[provided that]~~ these actions shall occur at the time waste is first placed in the container~~[?]~~, and Subsection R315-264-17(b) and Sections R315-264-171~~[?]~~ and R315-264-172 are complied with.

(viii) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, managing the wastes listed ~~[below]~~ in Subsections R315-270-1(c)(2)(viii)(A) through (E). These handlers are subject to regulation under Rule R315-273 if handling the following universal wastes~~[?]~~:

(A) batteries as described in Section R315-273-2;

(B) pesticides as described in Section R315-273-3;

(C) mercury-containing equipment as described in Section R315-273-4;~~and~~

(D) lamps as described in Section R315-273-5~~[?]~~; and

(E) aerosol cans as described in Section R315-273-6.

(ix) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in Section R315-266-500. Reverse distributors are subject to regulation under Sections R315-266-500 through R315-266-510 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) a discharge of a hazardous waste;

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

(C) a discharge of a material that, if discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to the applicable requirements of Rule R315-270 for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. The ~~[D]~~director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to each of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Rule R315-265 standards shall obtain a post-closure permit unless they can demonstrate to the ~~[D]~~director that the closure met the standards for closure by removal or decontamination in Section R315-264-228, Subsection R315-264-280(e), or Section R315-264-258, respectively. The demonstration may be made in the following ways~~[?]~~.

(i) If the owner or operator has submitted a part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that Rule R315-264 closure by removal standards were met. If the ~~[D]~~director believes that Rule R315-264 standards were met, the ~~[D]~~director shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in Subsection R315-270-1(c)(6).

(ii) If the owner or operator has not submitted a part B application for a post-closure permit, the owner or operator may petition the ~~[D]~~director for a determination that a post-closure permit is not required because the closure met the applicable Rule R315-264 closure standards.

(A) The petition shall include data demonstrating that closure by removal or decontamination standards of Rule R315-264 were met.

(B) The ~~[D]~~director shall approve or deny the petition according to the procedures outlined in Subsection R315-270-1(c)(6).

(6) Procedures for closure equivalency determination.

(i) If a facility owner or operator seeks an equivalency demonstration under Subsection R315-270-1(c)(5), the ~~[D]~~director shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The ~~[D]~~director shall also, in response to a request or at the ~~[D]~~director's discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Rule R315-265 closure to a Rule R315-264 closure. The ~~[D]~~director shall give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the ~~[same]~~ time ~~[as]~~ that notice of the opportunity for the public to submit written comments is given, and the two notices may be combined.

(ii) The ~~[D]~~director shall determine whether the Rule R315-265 closure met the Rule R315-264 closure by removal or decontamination requirements within 90 days of its receipt. If the ~~[D]~~director finds that the closure did not meet the applicable Rule R315-264 standards, the ~~[D]~~director shall provide the owner or operator with a written statement of the reasons why the closure failed to meet Rule R315-264 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving ~~[such]~~ the written statement. The ~~[D]~~director shall review any additional information submitted and make a final determination within 60 days.



(iii) If the [D]director determines that the facility did not close in accordance with Rule R315-264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the [D]director, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of Section R315-265-121. "Enforceable document" means an order, a permit, or other document issued by the [D]director including[~~-, but not limited to,~~] a corrective action order issued by EPA under [s]Section 3008(h), a CERCLA remedial action, or a closure or post-closure permit.

**KEY:** hazardous waste

**Date of Last Change:** 2021[September 14, 2020]

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R315-273

**Filing ID**  
53918

#### Agency Information

|                             |  |                |
|-----------------------------|--|----------------|
| <b>1. Department:</b>       | Environmental Quality                                    |                |
| <b>Agency:</b>              | Waste Management and Radiation Control, Waste Management |                |
| <b>Building:</b>            | MASOB  |                |
| <b>Street address:</b>      | 195 N 1950 W   |                |
| <b>City, state and zip:</b> | Salt Lake City, UT 84116                                 |                |
| <b>Mailing address:</b>     | PO Box 144880  |                |
| <b>City, state and zip:</b> | Salt Lake City, UT 84114-4880                            |                |
| <b>Contact person(s):</b>   |  |                |
| <b>Name:</b>                | <b>Phone:</b>  | <b>Email:</b>  |
| Tom Ball                    | 801-536-0251   | tball@utah.gov |

Please address questions regarding information on this notice to the agency.

#### General Information

##### 2. Rule or section catchline:

R315-273. Standards for Universal Waste Management

##### 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, the EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also

amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah in Rule R315-273 of the Utah Administrative Code prior to the EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by the EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah.

##### 4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The amended rule allows aerosol cans containing pesticides to be managed as aerosol can universal waste. The rule rennumbers Section R315-273-6 to Section R315-273-7 and creates a new Section R315-273-6 Standards for Universal Waste Management - Applicability - Aerosol Cans and moves the aerosol can subsection from the new Section R315-273-7 to the new Section R315-273-6. The rule amends the definition of aerosol can so that it is consistent with the Department of Transportation definition of aerosol can. The amended rule will allow handlers to sort aerosol cans by type, consolidate intact aerosol cans in larger containers, and remove actuators to reduce the risk of accidental release. The amended rule no longer requires handlers to separate aerosol cans whose contents may be incompatible but requires containers being used to accumulate aerosol cans be protected from sources of heat. Citations to Section R315-262-34 which no longer exists are updated to the proper, current citations. The rule amends the labeling and marking requirements for containers of universal waste aerosol cans. The amended rule contains a requirement that handlers who puncture aerosol cans must maintain a copy of the puncturing device manufacturers instructions and ensure that employees are trained. It also requires empty, punctured aerosol cans to be recycled. The rule also exempts aerosol cans that meet the standard for empty containers from being managed as universal waste.

In addition to the changes being made for consistency with the federal regulations for management of aerosol cans as universal waste the Division of Waste Management and Radiation Control, Waste Management (Division) has amended the definition of antifreeze contained in Rule R315-273. The definition is being expanded to include not only antifreeze used as an engine coolant, but antifreeze used in electronics cooling applications, winterizing equipment and used in heating, ventilating and air conditioning units.

The Division has corrected typographical and formatting errors in this rule in addition to the changes discussed above.

**Fiscal Information****5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

It is not anticipated that there will be any measurable cost or savings to the state budget due to this rule amendment because the amendment does not change how the division will oversee the rule. Additionally, because Rule R315-273 is an optional rule it is unknown how many, if any, state agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within the state budget. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

**B) Local governments:**

It is not anticipated that there will be any measurable cost or savings to the budgets of local governments due to this rule amendment. Rule R315-273 is an optional rule and therefore, it is unknown how many, if any, local government agencies are complying with this rule so it is not possible to determine the cost or savings that might be experienced within local government budgets. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to small businesses due to this rule amendment. Rule R315-273 is an optional rule, and therefore, it is unknown how many small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to non-small businesses due to this rule amendment. Rule R315-273 is an optional rule and therefore, it is unknown how many non-small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by non-small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

It is not anticipated that there will be any measurable cost or savings to persons other than small businesses due to this rule amendment. Rule R315-273 is an optional rule, and therefore, it is unknown how many persons other than small businesses are complying with this rule so it is not possible to determine the cost or savings that might be experienced by persons other than small businesses. It is anticipated that any cost or savings would not be significant because the amendment does not significantly change how aerosol cans are managed under this rule.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how aerosol cans are managed under this rule it is not anticipated that the compliance costs for affected persons will change due to this rule amendments.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

It is not anticipated that this rule amendment will have any additional fiscal impact on any businesses that are currently complying with this rule beyond the current costs of compliance. The changes are being made to keep the hazardous waste management program in the compatible with the federal program. Kimberly D. Shelley, Executive Director

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

**Regulatory Impact Table**

| <b>Fiscal Cost</b>       | <b>FY2022</b> | <b>FY2023</b> | <b>FY2024</b> |
|--------------------------|---------------|---------------|---------------|
| State Government         | \$0           | \$0           | \$0           |
| Local Governments        | \$0           | \$0           | \$0           |
| Small Businesses         | \$0           | \$0           | \$0           |
| Non-Small Businesses     | \$0           | \$0           | \$0           |
| Other Persons            | \$0           | \$0           | \$0           |
| <b>Total Fiscal Cost</b> | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |
| <b>Fiscal Benefits</b>   |               |               |               |
| State Government         | \$0           | \$0           | \$0           |
| Local Governments        | \$0           | \$0           | \$0           |

|                              |            |            |            |
|------------------------------|------------|------------|------------|
| Small Businesses             | \$0        | \$0        | \$0        |
| Non-Small Businesses         | \$0        | \$0        | \$0        |
| Other Persons                | \$0        | \$0        | \$0        |
| <b>Total Fiscal Benefits</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |
| <b>Net Fiscal Benefits</b>   | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

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

|                  |                  |                  |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-106 |
| 40 CFR 271.4     |                  |                  |

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)**

|  |            |
|--|------------|
| <b>A) Comments will be accepted until:</b> | 11/01/2021 |
|--|------------|

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on:</b> | 12/13/2021 |
|--|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

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

**R315-273. Standards for Universal Waste Management.**

**R315-273-1. Standards for Universal Waste Management -- Scope.**

(a) Rule R315-273 establishes requirements for managing the following:

- (1) [B]batteries as described in Section R315-273-2;
- (2) [P]pesticides as described in Section R315-273-3;

(3) [M]mercury-containing equipment as described in Section R315-273-4;

(4) [L]lamps as described in Section R315-273-5;

(5) [Antifreeze]aerosol cans as described in [Subsection]Section R315-273-6(a); and

(6) [Aerosol cans]antifreeze as described in [Subsection]Section R315-273-6(b);

(b) Rule R315-273 provides an alternative set of management standards in lieu of regulation under Rules R315-260 through R315-266, R315-268, and R315-270. If a waste handler chooses to manage its universal waste under the Rule R315-273, but fails to meet requirements in this rule, the waste handler remains subject to, and shall comply with, [all]the applicable requirements of Rules R315-260 through R315-266, R315-268, R315-270 and R315-124.

Note: Only wastes that are hazardous, [i.e.,]meaning wastes that are listed or exhibit one or more characteristics of hazardous waste, are subject to the Rule R315-273 universal waste [regulations]rules. Compliance with the reduced set of Rule R315-273 requirements is an option that waste handlers may choose for managing their universal wastes, batteries, pesticides, mercury-containing devices, aerosol cans, lamps, and antifreeze. If universal waste handlers wish, they may instead continue to manage these hazardous wastes under the full hazardous waste [regulations]rules for generators, transporters, and treatment, storage, and disposal facilities.

**R315-273-3. Standards for Universal Waste Management -- Applicability-Pesticides.**

(a) Pesticides covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing pesticides, as described in Section R315-273-9, meeting the following conditions, except those listed in Subsection R315-273-3(b):

(1) [R]recalled pesticides that are:

(i) [S]stocks of a suspended and cancelled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including[, but not limited to] those owned by the registrant responsible for conducting the recall; or

(ii) [S]stocks of a suspended or cancelled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) [S]stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following pesticides:

(1) [R]recalled pesticides described in Subsection R315-273-3(a)(1), and unused pesticide products described in Subsection R315-273-3(a)(2), that are managed by farmers in compliance with Section R315-262-70. Section R315-262-70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with Subsection R315-261-7(b)(3);

(2) [P]pesticides not meeting the conditions set forth in Subsection R315-273-3(a). These pesticides shall be managed in compliance with the hazardous waste [regulations]rules in Rules R315-260 through R315-266, R315-268, and R315-270, except that aerosol cans as defined in Section R315-273-9 that contain pesticides may be managed as aerosol can universal waste in accordance with Subsections R315-273-13(f) or R315-273-33(f);

(3) [P]pesticides that are not wastes under Rule R315-261, including those that do not meet the criteria for waste generation in Subsection R315-273-3(c) or those that are not wastes as described in Subsection R315-273-3(d); and

(4) ~~[P]~~pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in Sections R315-261-30 through R315-261-35 or if it exhibits one or more of the characteristics identified in Sections R315-261-20 through R315-261-24.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in Subsection R315-273-3(a)(1) becomes a waste on the first date on which both of the following conditions apply:

(i) ~~[F]~~the generator of the recalled pesticide agrees to participate in the recall; and

(ii) ~~[F]~~the person conducting the recall decides to discard, ~~[e.g.]for example,~~ burn the pesticide for energy recovery.

(2) An unused pesticide product described in Subsection R315-273-3(a)(2) becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in Subsection R315-273-3(a)(1), ~~[provided that]~~ if the person conducting the recall:

(i) Has not made a decision to discard, ~~[e.g.]for example,~~ burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of ~~[a]~~solid waste~~]~~ under Section R315-261~~[-]~~2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including Rule R315-273. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under Section R315-261-2, does not cause the pesticide to be a solid waste; ~~[i.e.,]that is,~~ the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery, or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including Rule R315-273. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) ~~[U]~~unused pesticide products described in Subsection R315-273-3(a)(2), if the generator of the unused pesticide product has not decided to discard, ~~[e.g.]for example,~~ burn for energy recovery, them. These pesticides remain subject to the requirements of FIFRA.

#### **R315-273-6. Standards for Universal Waste Management -- Applicability-Aerosol Cans.**

~~(a) Aerosol cans covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing aerosol cans, as described in Section R315-273-9, except those listed in Subsection R315-273-6(b).~~

~~(b) Aerosol cans not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following types of aerosol cans:~~

~~(1) Aerosol cans that are not yet waste under Rule R315-261. Subsection R315-273-6(c) describes when an aerosol can becomes a waste.~~

~~(2) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in Sections R315-261-20 through R315-261-24 or the aerosol can contains a substance that is listed in Sections R315-261-30 through R315-261-35.~~

~~(3) Aerosol cans that meet the standard for empty containers under Section R315-261-7.~~

~~(c) Generation of waste aerosol cans.~~

~~(1) A used aerosol can becomes a waste on the date it is discarded.~~

~~(2) An unused aerosol can becomes a waste on the date the handler decides to discard it.~~

#### **R315-273-[6]7. Standards for Universal Waste Management -- Applicability for Utah Specific Wastes.**

~~(a) Antifreeze.~~

~~(1) The requirements of Rule R315-273 apply to persons managing antifreeze, as described in Section R315-273-9, except those listed in Subsection R315-273-6(a)(2).~~

~~(2) Antifreeze not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following antifreeze:~~

~~(i) [A]antifreeze, as described in Section R315-273-9, that is not yet a waste under Rule R315-261, including antifreeze that does not meet the criteria for waste generation in Subsection R315-273-6(a)(4)[7];~~

~~(ii) [A]antifreeze, as described in Section R315-273-9 that is not hazardous waste. Antifreeze is a hazardous waste if it exhibits one or more of the characteristics identified in Sections R315-261-20 through R315-261-24.~~

~~(3) Generation of waste antifreeze.~~

~~(i) Antifreeze becomes a waste on the date it is discarded, [e.g.]for example, when sent for reclamation.~~

~~(ii) Antifreeze becomes a waste on the date the handler decides to discard it.~~

~~[-----] (b) Aerosol Cans~~

~~(1) The requirements of Rule R315-273 apply to persons managing aerosol cans, as described in Section R315-273-9, except those listed in Subsection R315-273-6(b)(2).~~

~~(2) Aerosol cans not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following aerosol cans:~~

~~(i) Aerosol cans, as described in Section R315-273-9, that are not yet wastes under Rule R315-261, including those that do not meet the criteria for waste generation in subsection R315-273(b)(3).~~

~~(ii) Aerosol cans, as described in Section R315-273-9, that are not hazardous waste. An aerosol can shall be managed as a hazardous waste if the can or its contents exhibit one or more of the characteristics identified in Sections R315-261-20 through 24, or if its contents are listed in Sections R315-261-30 through 35.~~

~~(3) Generation of waste aerosol cans.~~

~~(i) An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of Rule R315-273, an aerosol can is considered to be no longer useable when:~~

~~(A) the can is as empty as proper work practices allow;~~

~~(B) the spray mechanism no longer operates as designed;~~

~~(C) the propellant is spent; or~~

~~(D) the product is no longer used.~~

~~(ii) An unused aerosol can becomes a waste on the date the handler decides to discard it.]~~

#### **R315-273-9. Standards for Universal Waste Management -- Definitions.**

~~(a) "Aerosol can" means [a container with a total capacity of no more than 24 ounces of gas under pressure and is used to aerate and dispense any material through a valve in the form of a spray or foam] a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.~~

(b) "Ampule" means an air-tight vial made of glass, plastic, metal, or any combination of these materials.

(c) "Antifreeze" means ~~an~~ethylene glycol or propylene glycol including aggregated batches of ethylene glycol or propylene glycol used as a heat transfer medium in an internal combustion engine; heating, ventilating, and air conditioning units; and electronics cooling applications; or used for winterizing equipment~~based mixture that lowers the freezing point of water and is used as an engine coolant~~.

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

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

(f) "Drum-top lamp crusher" means a device attached to a drum or container that mechanically reduces the size of lamps and includes a bag filter followed in series by a HEPA filter and an activated carbon filter. Drum-top crushers are the only devices that can be approved for the use of crushing lamps.

(g) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, [47 U.S.C. 136-136y].

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

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

(j) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in Section R315-273-9 who accumulates 5,000 kilograms or more total of universal waste; batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, or any other universal waste regulated in Rule R315-273, calculated collectively; at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

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

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

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

(1) [H]is a new animal drug under Federal Food, Drug, and Cosmetic Act (FFDCA) [s]Section 201(w)~~;~~~~[-or]~~

(2) [H]is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug~~;~~ or

(3) [H]is an animal feed under FFDCA [s]Section 201(x) that bears or contains any substances described by Subsections R315-273-9(m)(1) or R315-273-9(m)(2)~~[-above]~~.

(n) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this Section R315-273-9 who does not accumulate 5,000 kilograms or more of universal waste, batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, or any other universal waste regulated in Rule R315-273, calculated collectively, at any time.

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

(p) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of Rule R315-273:

(1) [B]batteries as described in Section R315-273-2;

(2) [P]pesticides as described in Section R315-273-3;

(3) [M]mercury-containing equipment as described in Section R315-273-4;

(4) [L]lamps as described in Section R315-273-5;

(5) ~~Antifreeze~~ aerosol cans as described in ~~Subsection~~Section R315-273-6~~(a)~~; and

(6) ~~Aerosol cans~~ antifreeze as described in ~~Subsection~~Section R315-273-~~6(b)~~7.

(q) "Universal Waste Handler:"

(1) [M]means:

(i) [A]a generator, as defined in Section R315-273-9, of universal waste; or

(ii) [F]the owner or operator of a facility, including ~~all~~any contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) [A]a person who treats, except under ~~the provisions of~~Subsections R315-273-13(a) or R315-273-13(c), or R315-273-33(a) or R315-273-33(c), disposes of, or recycles, except under Subsections R315-273-13(f) or R315-273-33(f), universal waste; or

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

(r) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

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

**R315-273-13. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste – Waste Management.**

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

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

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

- (i) ~~[S]~~ sorting batteries by type;
- (ii) ~~[M]~~ mixing battery types in one container;
- (iii) ~~[D]~~ discharging batteries so as to remove the electric charge;
- (iv) ~~[R]~~ regenerating used batteries;
- (v) ~~[D]~~ disassembling batteries or battery packs into individual batteries or cells;
- (vi) ~~[R]~~ removing batteries from consumer products; or
- (vii) ~~[R]~~ removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, ~~[e.g.]~~ such as battery pack materials, or discarded consumer products, as a result of the activities listed ~~[above]~~ in Subsection R315-273-13(a)(2), shall determine whether the electrolyte and ~~[or]~~ other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24.

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

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

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

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

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

(3) ~~[A]~~ a tank that meets the requirements of ~~[40 CFR Sections R315-265]-190 through R315-265-202~~, except for ~~[40 CFR Subsection R315-265]-197(c) and [40 CFR Section R315-265]-200~~ ~~[and 201, 40 CFR 265 is adopted by reference in R315-265]~~; or

(4) ~~[A]~~ a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage,

spillage, or damage that could cause leakage under reasonably foreseeable conditions.

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

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

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

(i) ~~[R]~~ removes and manages the ampules in a manner designed to prevent breakage of the ampules;

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

(iii) ~~[E]~~ ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that ~~[meets the requirements of Section R315-262-34]~~ is subject to the applicable requirements of Rules R315-260 through R315-270;

(iv) ~~[I]~~ immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of ~~[Section R315-262-34]~~ Rules R315-260 through R315-270;

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

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

(vii) ~~[S]~~ stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) ~~[P]~~ packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

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

(i) ~~[I]~~ immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) ~~[F]~~ follows ~~[all]~~ the requirements for removing ampules and managing removed ampules under Subsection R315-273-13(c)(2); and

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

(A) ~~[M]~~mercury or clean-up residues resulting from spills or leaks;~~and/or~~

(B) ~~[O]~~other solid waste generated as a result of the removal of mercury-containing ampules or housings, ~~[e.g.,]~~such as the remaining mercury-containing device~~[-]~~; or both.

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

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

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

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

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

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

(i) ~~[F]~~the lamps are crushed in a closed accumulation container as specified by the manufacturer of the drum-top lamp crusher;

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

(iii) ~~[F]~~the drum-top lamp crusher shall have a filtration system consisting of, at a minimum, a bag filter followed in series by a HEPA filter and an activated carbon filter;

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

(v) ~~[F]~~filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) ~~[A]~~a spill clean-up kit is available;

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

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

(ix) ~~[A]~~an employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) ~~[A]~~an operating record is kept and consists of the following:

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

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

(C) date and time of filter change out;

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

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

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

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

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

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

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

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

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

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

(3) ~~[A]~~a tank that meets the requirements of ~~[40 CFR Sections R315-265[-]-190 through R315-265-202, except for [40 CFR Subsection R315-265[-]-197(c) and [40 CFR Section R315-265[-]-200[-] and 201, 40 CFR 265 is adopted by reference in R315-265];~~ or

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

(f) Aerosol cans. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste ~~[or accelerant]~~ to the environment as follows:

(1) ~~[A small quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.]~~ Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) ~~[A small quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.]~~ Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of Subsection R315-273-13(f)(4).

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

- ~~(i) sorting aerosol cans by type;~~
- ~~(ii) mixing intact cans in one container; and~~
- ~~(iii) removing actuators to reduce the risk of accidental release.~~

~~[(3)4]~~ A small quantity handler of universal waste ~~[may puncture universal waste]who punctures and drains their~~ aerosol cans ~~[to remove and collect the contents of the aerosol can provided the handler]shall~~ recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) ~~[Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;]~~ Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) ~~[Ensures that the puncturing operations are performed safely by developing and implementing]~~ Establish and follow a written procedure detailing how to safely puncture and drain universal waste aerosol cans, including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the manufacturer's specifications and instructions on-site; and ensure employees operating the device are trained in the proper procedures. [This procedure shall include:

- ~~(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;~~
- ~~(B) operation and maintenance of the unit;~~
- ~~(C) segregation of incompatible wastes;~~

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

(iii) Ensure[s that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can puncturing operation;] that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes locating the equipment on a solid, flat surface in a well ventilated area.

(iv) Immediately transfer[s] the contents of the universal waste aerosol can[s] or puncturing device, if applicable, to a container or tank that meets the requirements of Sections R315-262-[34];14, R315-262-15, R315-262-16 or R315-262-17.

(v) ~~[Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and]~~ Conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with Section R315-262-11. Hazardous waste generated as a result of puncturing and draining the aerosol can is subject to the applicable requirements of Rules R315-260 through R315-270. The handler is considered the generator of the hazardous waste and is subject to Rule R315-262.

(vi) ~~[Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;]~~ If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste rules or regulations.

(vii) A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit shall be provided. Spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.

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

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

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

#### **R315-273-14. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste – Labeling/[4] and Marking.**

A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as



specified ~~[below]~~ in Subsections R315-273-14(a) through R315-273-14(g).

(a) Universal waste batteries, ~~[i.e.]~~ that is, each battery, or a container in which the batteries are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)[s]"; or "Waste Battery(ies)[s]"; or "Used Battery(ies)[s]";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall be labeled or marked clearly with:

(1) ~~[F]~~the label that was on or accompanied the product as sold or distributed; and

(2) ~~[F]~~the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[s]";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall be labeled or marked clearly with:

(1)(i) ~~[F]~~the label that was on the product when purchased, if still legible;

(ii) ~~[F]~~if using the labels described in Subsection R315-273-14(c)(1)(i) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) ~~[F]~~if using the labels described in Subsections R315-273-14(c)(1)(i) and (ii) is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) ~~[F]~~the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[s]";

(d)(1) Universal waste mercury-containing equipment, ~~[i.e.]~~ that is, each device, or a container in which the equipment is contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment[s]"; "Waste Mercury-Containing Equipment[s]"; or "Used Mercury-Containing Equipment[s]";

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)[s]"; "Waste Mercury Thermostat(s)[s]"; or "Used Mercury Thermostat(s)[s]";

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)[s]"; or "Waste Lamp(s)[s]"; or "Used Lamp(s)";

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste-antifreeze".

(g) Universal waste aerosol cans, ~~[i.e.]~~ that is, each aerosol can, or a container in which the ~~[universal waste]~~ aerosol cans are contained ~~[or accumulated]~~, shall be labeled or marked clearly with any ~~[one]~~ of the following phrases: "Universal Waste-Aerosol Can(s)", "Waste Aerosol Can(s)", or "~~[Waste]~~Used Aerosol Can(s)".

### **R315-273-32. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Notification.**

(a)(1) Except as provided in Subsections R315-273-32(a)(2) and R315-273-32(a)(3), a large quantity handler of universal waste shall have sent written notification of universal waste management to the Director, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified the Director of his hazardous waste management

activities and has received an EPA Identification Number is not required to renotify under ~~[this s]~~Section R315-273-32 except as required in Subsection R315-273-33(d)(3).

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under ~~[this s]~~Section R315-273-32.

(b) This notification shall include:

(1) ~~[F]~~the universal waste handler's name and mailing address;

(2) ~~[F]~~the name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) ~~[F]~~the address or physical location of the universal waste management activities;

(4) ~~[A]~~a list of ~~[all]~~ the types of universal waste managed by the handler, for example, batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans; and

(5) ~~[A]~~a statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

### **R315-273-33. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Waste Management.**

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

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

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

(i) ~~[S]~~sorting batteries by type;

(ii) ~~[M]~~mixing battery types in one container;

(iii) ~~[D]~~discharging batteries so as to remove the electric charge;

(iv) ~~[R]~~regenerating used batteries;

(v) ~~[D]~~disassembling batteries or battery packs into individual batteries or cells;

(vi) ~~[R]~~removing batteries from consumer products; or

(vii) ~~[R]~~removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, ~~[e.g.,]~~ such as battery pack materials, or discarded consumer products, as a result of the activities listed ~~[above]~~ in Subsection R315-273-33(a)(2), shall determine whether the electrolyte and ~~[or]~~ other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through R315-261-24.

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

of the hazardous electrolyte and~~[or]~~ other waste and is subject to Rule R315-262.

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

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

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

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

(3) ~~[A]~~[a] tank that meets the requirements of ~~[40 CFR Sections R315-265]-190 through R315-265-202~~, except for ~~[40 CFR Subsection R315-265]-197(c) and [40 CFR Section R315-265]-200~~ ~~[and 201, 40 CFR 265 is adopted by reference in R315-265]~~; or

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

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

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

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

(i) ~~[R]~~[r]emoves and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) ~~[R]~~[r]emoves the ampules only over or in a containment device, ~~[e.g., such as a tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage]~~;

(iii) ~~[E]~~[e]nsures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that ~~[meets the requirements of Section R315-262-34]~~ is subject to the applicable requirements of Rules R315-260 through R315-270;

(iv) ~~[H]~~[h] immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of ~~[Section R315-262-34]~~ Rules R315-260 through R315-270;

(v) ~~[E]~~[e]nsures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) ~~[E]~~[e]nsures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency

procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) ~~[S]~~[s]tores removed ampules in closed, non-leaking containers that are in good condition; and

(viii) ~~[P]~~[p]acks removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

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

(i) ~~[H]~~[h] immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) ~~[F]~~[f]ollows ~~[all]~~ the requirements for removing ampules and managing removed ampules under Subsection R315-273-33(c)(2); and

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

(A) ~~[M]~~[m]ercury or clean-up residues resulting from spills or leaks~~[and/or]~~;

(B) ~~[O]~~[o]ther solid waste generated as a result of the removal of mercury-containing ampules or housings, ~~[e.g.,]~~ such as the remaining mercury-containing device; or both.

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

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

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

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

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

(3) A large quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps ~~[provided that]~~ after the ~~[L]~~[l]arge quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall

demonstrate that the large quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) ~~[F]~~the lamps are crushed in a closed accumulation container as specified by the manufacturer of the drum-top lamp crusher;

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

(iii) ~~[F]~~the drum-top lamp crusher shall have a filtration system consisting of, at a ~~[minimum]~~minimum, a bag filter followed in series by a HEPA filter and an activated carbon filter;

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

(v) ~~[F]~~filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) ~~[A]~~a spill clean-up kit is available;

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

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

(ix) ~~[The]~~an employee using the drum-top lamp crusher is trained annually in emergency procedures; and

(x) ~~[A]~~an operating record is kept and consists of the following:

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

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

(C) date and time of filter change out;

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

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

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

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

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

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

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

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

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

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

(3) ~~[A]~~a tank that meets the requirements of ~~[40 CFR Sections R315-265]-~~190 through R315-265-202, except for ~~[40 CFR Subsection R315-265]-~~197(c) and ~~[40 CFR]-~~Section R315-265~~-~~200~~and 201, 40 CFR 265 is adopted by reference in R315-265~~; or

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

(f) Aerosol cans. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste ~~[or accelerant]~~ to the environment as follows:

(1) ~~[A large quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.]~~Universal waste aerosol cans shall be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) ~~[A large quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.]~~Universal waste aerosol cans that show evidence of leakage shall be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of Subsection R315-273-33(f).

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) sorting aerosol cans by type;

(ii) mixing intact cans in one container; and

(iii) removing actuators to reduce the risk of accidental release.

~~[(3)]~~4 A large quantity handler of universal waste ~~[may]~~who punctures and drains their ~~[universal waste]~~aerosol cans ~~[to remove and collect the contents of the aerosol can provided the handler]~~shall recycle

the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) ~~[Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerator to the environment;]~~ Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) ~~[Ensures that the puncturing operations are performed safely by developing and implementing]~~ Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol cans, including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases; maintain a copy of the manufacturer's specifications and instructions on-site; and ensure employees operating the device are trained in the proper procedures. [This procedure shall include:

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

\_\_\_\_\_ (B) operation and maintenance of the unit;

\_\_\_\_\_ (C) segregation of incompatible wastes;

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

\_\_\_\_\_ (E) waste characterization;]

(iii) Ensure[s] that [a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can puncturing operation;] puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes locating the equipment on a solid, flat surface in a well ventilated area.

(iv) Immediately transfer[s] the contents ~~[of]~~ from the [universal] waste aerosol can, or puncturing device, if applicable, to a container or tank that meets the requirements of Sections R315-262-[34]14, R315-262-15, R315-262-16, or R315-262-17.[s]

(v) ~~[Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and]~~ Conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with Section R315-262-11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to the applicable requirements of Rules R315-260 through R315-270. The handler is considered the generator of the hazardous waste and is subject to Rule R315-262.

(vi) ~~[Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies]~~ If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste rules or regulations.

(vii) A written procedure shall be in place in the event of a spill or leak and a spill clean-up kit shall be provided. Spills or leaks of the contents of the aerosol cans shall be cleaned up promptly.[

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

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

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

#### **R315-273-34. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Labeling[4] and Marking.**

A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified [below:] in Subsections R315-273-34(a) through R315-273-34(g).

(a) Universal waste batteries, ~~[i.e.]~~ that is, each battery, or a container or tank in which the batteries are contained, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)[s]"; or "Waste Battery(ies)[s]"; or "Used Battery(ies)[s]";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall be labeled or marked clearly with:

(1) [F]the label that was on or accompanied the product as sold or distributed; and

(2) [F]the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[s]";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall be labeled or marked clearly with:

(1)(i) [F]the label that was on the product when purchased, if still legible;

(ii) [F]if using the labels described in Subsection R315-273-34(c)(1)(i) is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) [F]if using the labels described in Subsections R315-273-34(c)(1)(i) and R315-273-34(c)(1)(ii) is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) [F]the words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)[s]";

(d)(1) Mercury-containing equipment, ~~[i.e.]~~ that is, each device, or a container in which the equipment is contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment[s]"; "Waste Mercury-Containing Equipment[s]"; or "Used Mercury-Containing Equipment[s]";

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)[s]"; "Waste Mercury Thermostat(s)[s]"; or "Used Mercury Thermostat(s)[s]";

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the

following phrases: "Universal Waste-Lamp(s)[~~7~~]", or "Waste Lamp(s)[~~7~~]", or "Used Lamp(s)".

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste-antifreeze".

(g) Universal waste aerosol cans, [~~i.e.~~]that is, each aerosol can, or a container in which the [~~universal waste~~]aerosol cans are contained[~~or accumulated~~], shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)", [~~or~~] "Waste Aerosol Can(s)", or "Used Aerosol Can(s)".

**KEY:** hazardous waste, universal waste

**Date of Last Change:** 2021[September 14, 2020]

**Notice of Continuation:** January 14, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

|                                      |                 |                                  |
|--------------------------------------|-----------------|----------------------------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R317-1-7</b> | <b>Filing ID</b><br><b>53968</b> |
|--------------------------------------|-----------------|----------------------------------|

## Agency Information

|  |                                    |                    |
|--|------------------------------------|--------------------|
| <b>1. Department:</b>  | Environmental Quality              |                    |
| <b>Agency:</b>   | Water Quality                      |                    |
| <b>Room no.:</b>   | DEQ, Third Floor                   |                    |
| <b>Building:</b>   | Multi Agency State Office Building |                    |
| <b>Street address:</b>   | 195 N 1950 W                       |                    |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84116           |                    |
| <b>Mailing address:</b>  | PO BOX 144870                      |                    |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84114-4870      |                    |
| <b>Contact person(s):</b>  |                                    |                    |
| <b>Name:</b>   | <b>Phone:</b>                      | <b>Email:</b>      |
| Jodi Gardberg  | 801-536-4372                       | jgardberg@utah.gov |
| Please address questions regarding information on this notice to the agency. |                                    |                    |

## General Information

|  |
|--|
| <b>2. Rule or section catchline:</b>   |
| R317-1-7. TMDLs  |
| <b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>  |
| The purpose of this amendment is to incorporate by reference into this rule the completed Total Maximum Daily Load (TMDL) study for Spring Creek (Heber) for E. coli as approved by the Water Quality Board. |

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This section incorporates by reference the completed Spring Creek (Heber) TMDL for E. coli into this rule. This TMDL document was approved by the Water Quality Board on August 25, 2021, to initiate rulemaking to adopt the TMDL.

## Fiscal Information

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

### A) State budget:

There are no anticipated costs or financial savings to the state budget. The proposed amendment will be addressed using existing state resources. The Implementation Plan of the TMDL suggests improvements that may be made on a voluntary basis with local interest and leadership driving the process. The one permitted discharge facility, Jordanelle Special Service District Water Reclamation Facility, will not have stricter discharge limits based on this TMDL. The wasteload allocation is based on existing secondary limits. The Spring Creek (Heber) E. coli TMDL is entirely focused on nonpoint sources. Therefore, none of the recommendations within it are mandated. The Division of Water Quality (DWQ) and other state and federal agencies provide opportunities for cost share incentives for those interested in implementing best management practices, but all are on a voluntary basis and currently in place. The savings will not be monetary but will save in water quality conditions and recreational uses.

### B) Local governments:

All estimated costs for implementing this TMDL are associated with strategies that are voluntary and addressed through existing voluntary incentive programs. It is not anticipated that local governments will be affected. Monetary savings to local governments will be minimal, however savings will occur in recreational uses and water quality conditions.

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

All estimated costs for implementing this TMDL are associated with strategies that are voluntary and addressed through existing voluntary incentive programs. It is not anticipated that small businesses will be affected. Monetary savings for small businesses will be minimal; however, savings will occur in recreational uses and water quality conditions.

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

**WASTE MANAGEMENT AND RADIATION CONTROL BOARD**  
**Executive Summary**  
**Final Adoption**  
**Amendments to Radiation Control Rule UAC R313-16-290**  
**December 9, 2021**

|   |  |
|---|--|
| <b>What is the issue before the Board?</b>                          | Final approval from the Board is needed to adopt changes to UAC R313-16-290 of the Radiation Control Rules that amend the inspection frequency found in Table I of Subsection R313-16-290(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities.  |
| <b>What is the historical background or context for this issue?</b> | <p>At the Board meeting on September 9, 2021, the Board approved the proposed changes to UAC R313-16-290 to be filed with the Office of Administrative Rules for publication in the Utah State Bulletin. The proposed rule changes were published in the October 1, 2021, issue of the Utah State Bulletin (Vol. 2021, No. 19).</p> <p>Selected pages from the Utah State Bulletin showing the publication of the proposed changes follow this Executive Summary.</p> <p>The public comment period for this rulemaking ended on November 1, 2021. No comments were received.</p> |
| <b>What is the governing statutory or regulatory citation?</b>      | <p>The Board is authorized under Subsection 19-6-104 to make rules that are necessary to implement the provision of the Radiation Control Act.</p> <p>The rule changes also meet existing DEQ and state rulemaking procedures.</p>   |
| <b>Is Board action required?</b>                                    | Yes. Board approval for final adoption of the rule changes is necessary.   |
| <b>What is the Division Director's recommendation?</b>              | The Director recommends the Board approve final adoption of the changes to UAC R313-16-290 as published in the October 1, 2021 issue of the Utah State Bulletin and set an effective date of December 13, 2021.  |
| <b>Where can more information be obtained?</b>                      | Please contact Tom Ball by email at <a href="mailto:tball@utah.gov">tball@utah.gov</a> or by phone at (801) 536-0251.  |

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed September 02, 2021, 12:00 a.m. through September 15, 2021, 11:59 p.m.

Number 2021-19  
October 01, 2021

Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Government Operations, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

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(5) The director shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

**KEY:** air pollution, greenhouse gases, operating permit, emission fees

**Date of Last Change:** 2021[September 3, 2020]

**Notice of Continuation:** May 15, 2017

**Authorizing, and Implemented or Interpreted Law:** 19-2-109.1; 19-2-104

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

|                                      |                    |                  |              |
|--------------------------------------|--------------------|------------------|--------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R313-16-290</b> | <b>Filing ID</b> | <b>53919</b> |
|--------------------------------------|--------------------|------------------|--------------|

### Agency Information

|  |   |                |
|--|---|----------------|
| <b>1. Department:</b>  | Environmental Quality                             |                |
| <b>Agency:</b>   | Waste Management and Radiation Control, Radiation |                |
| <b>Room no.:</b>   | Second Floor                                      |                |
| <b>Building:</b>   | MASOB   |                |
| <b>Street address:</b>   | 195 N 1950 W                                      |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84116                          |                |
| <b>Mailing address:</b>  | PO Box 144880                                     |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84114-4880                     |                |
| <b>Contact person(s):</b>  |   |                |
| <b>Name:</b>   | <b>Phone:</b>                                     | <b>Email:</b>  |
| Thomas Ball  | 801-536-0251                                      | tball@utah.gov |
| Please address questions regarding information on this notice to the agency. |   |                |

### General Information

|   |
|---|
| <b>2. Rule or section catchline:</b>  |
| R313-16-290. Inspection of Radiation Machines and Facilities  |
| <b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>   |
| When the rules were written, it was not envisioned that veterinary offices would be using fluoroscopic or computed tomography x-ray units. Because the x-ray units being used at the time were lower power with less scatter, they posed a lower risk to employees and animals if they were operating improperly so the inspection frequency for veterinary offices was set at five years like other facilities using similar equipment. Currently, nine veterinary offices in Utah have installed and are using fluoroscopic or computed tomography units. These units produce more scatter and therefore, pose a higher risk. Current rules |

specify that medical facilities using fluoroscopic or computed tomography units have an inspection frequency of one year due to the higher risk.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This change will amend the inspection frequency found in Table I of Subsection R315-16-260(2) for facilities using fluoroscopic or computed tomography units to include veterinary facilities. Rule formatting errors have also been corrected.

### Fiscal Information

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

#### A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this change because the state does not operate a veterinary facility with either a fluoroscopic or computed tomography x-ray unit.

#### B) Local governments:

It is not anticipated that there will be any cost or savings to local governments due to this change because there no local governments operating veterinary facilities with either a fluoroscopic or computed tomography x-ray unit.

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

There are approximately 422 small businesses in Utah providing Veterinary Services (North American Industry Classification System (NAICS) 541940) and Pet Care (812910). Of these, 177 have registered x-ray units, 6 of these registered units are computed tomography units. Veterinary facilities with x-ray units that are not computed tomography units are inspected once every 5 years at a cost of \$75 which, when divided across the 5 years is \$15 per year. Computed tomography units are required to be inspected by a qualified expert once a year. The fee for a qualified expert inspection ranges from \$250 to \$1,500. A small business that installs a computed tomography unit would see a maximum increased cost of approximately \$1,485 per year.

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

There are five non-small businesses in Utah providing Veterinary Services (NAICS 541940). All of them have registered x-ray units and three of these registered units are computed tomography units. Veterinary facilities with x-ray units that are not computed tomography units are inspected once every 5 years at a cost of \$75 which, when divided across the 5 years is \$15 per year. Computed tomography units are required to be inspected by a

qualified expert once a year. The fee for a qualified expert inspection ranges from \$250 to \$1,500. A non-small business that installs a computed tomography unit would see a maximum increased cost of approximately \$1,485 per year.

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

It is not anticipated that there will be any cost or savings to persons other than small businesses, non-small businesses, state, or local government entities due to this change because there are no persons other than small businesses, non-small businesses, state, or local government entities operating veterinary facilities with either a fluoroscopic or computed tomography x-ray unit.

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

It is not anticipated that there will be any additional compliance costs for affected persons due to the adoption of this rule other than those mentioned above.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Due to the increased risk to patients, employees, and the public of unnecessary exposure to radiation from the higher power and potential for increased scatter posed by fluoroscopic or computed tomography x-ray units the Department of Environmental Quality believes that the fiscal impact of this rule change is overcome by the need to protect patients, employees, and the public from over exposure to man-made radiation. By requiring fluoroscopic or computed tomography x-ray units used by veterinarians to be inspected at the same frequency as those used by other medical facilities the Department is safeguarding human health with balanced regulations. Kimberly D. Shelley, Executive Director

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

| Regulatory Impact Table |         |         |         |
|-------------------------|---------|---------|---------|
| Fiscal Cost             | FY2022  | FY2023  | FY2024  |
| State Government        | \$0     | \$0     | \$0     |
| Local Governments       | \$0     | \$0     | \$0     |
| Small Businesses        | \$8,910 | \$8,910 | \$8,910 |

|                              |                   |                   |                   |
|------------------------------|-------------------|-------------------|-------------------|
| Non-Small Businesses         | \$4,455           | \$4,455           | \$4,455           |
| Other Persons                | \$0               | \$0               | \$0               |
| <b>Total Fiscal Cost</b>     | <b>\$13,365</b>   | <b>\$13,365</b>   | <b>\$13,365</b>   |
| <b>Fiscal Benefits</b>       |                   |                   |                   |
| State Government             | \$0               | \$0               | \$0               |
| Local Governments            | \$0               | \$0               | \$0               |
| Small Businesses             | \$0               | \$0               | \$0               |
| Non-Small Businesses         | \$0               | \$0               | \$0               |
| Other Persons                | \$0               | \$0               | \$0               |
| <b>Total Fiscal Benefits</b> | <b>\$0</b>        | <b>\$0</b>        | <b>\$0</b>        |
| <b>Net Fiscal Benefits</b>   | <b>\$(13,365)</b> | <b>\$(13,365)</b> | <b>\$(13,365)</b> |

**B) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelley, has reviewed and approved this fiscal analysis.

#### Citation Information

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

|                  |  |  |
|------------------|--|--|
| Section 19-3-104 |  |  |
|------------------|--|--|

#### Public Notice Information

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

|  |            |
|--|------------|
| <b>A) Comments will be accepted until:</b> | 11/01/2021 |
|--|------------|

|  |            |
|--|------------|
| <b>10. This rule change MAY become effective on:</b> | 12/13/2021 |
|--|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

|  |                                      |              |            |
|--|--------------------------------------|--------------|------------|
| <b>Agency head or designee, and title:</b> | Douglas J. Hansen, Division Director | <b>Date:</b> | 09/09/2021 |
|--|--------------------------------------|--------------|------------|

**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.****R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.****R313-16-290. Inspection of Radiation Machines and Facilities.**

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the [D]director or by independent qualified experts.

(2) Inspections may, at the [D]director's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE 1[+]

| FACILITY TYPE   | MAXIMUM TIME BETWEEN INSPECTIONS |
|---|----------------------------------|
| Hospital or Radiation Therapy Facility  | one year                         |
| Medical or <u>Veterinary</u> Facility using Fluoroscopic or Computed Tomography (CT) Units    | one year                         |
| Medical Facility Using General Radiographic Devices   | two years                        |
| Chiropractic  | two years                        |
| Dental  | five years                       |
| Podiatry  | five years                       |
| Veterinary  | five years                       |
| Industrial Facility with High or Very High Radiation Areas Accessible to Individuals          | one year                         |
| Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes | five years                       |
| Other   | one to five years                |

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the [D]director.

**KEY:** x-rays, inspections

**Date of Last Change:** 2021~~April 13, 2020~~

**Notice of Continuation:** April 8, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-3-104

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

|                                      |                    |                        |
|--------------------------------------|--------------------|------------------------|
| <b>Utah Admin. Code Ref (R no.):</b> | <b>R315-260-10</b> | <b>Filing ID 53912</b> |
|--------------------------------------|--------------------|------------------------|

**Agency Information**

|  |  |                |
|--|--|----------------|
| <b>1. Department:</b>  | Environmental Quality                                    |                |
| <b>Agency:</b>   | Waste Management and Radiation Control, Waste Management |                |
| <b>Building:</b>   | MASOB  |                |
| <b>Street address:</b>   | 195 N 1950 W   |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84116                                 |                |
| <b>Mailing address:</b>  | PO Box 144880  |                |
| <b>City, state and zip:</b>  | Salt Lake City, UT 84114-4880                            |                |
| <b>Contact person(s):</b>  |  |                |
| <b>Name:</b>   | <b>Phone:</b>  | <b>Email:</b>  |
| Tom Ball   | 801-536-0251   | tball@utah.gov |
| Please address questions regarding information on this notice to the agency. |  |                |

**General Information**

|  |
|--|
| <b>2. Rule or section catchline:</b>   |
| R315-260-10. Definitions   |
| <b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>  |
| The Environmental Protection Agency (EPA) published a Final Rule entitled, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, in the Federal Register on December 9, 2019 (84 FR 67202). With this publication, EPA added aerosol cans as a regulated universal waste in 40 CFR 273. The final rule also amended other parts of 40 CFR as necessary. Aerosol cans were already regulated as a universal waste in Utah prior to EPA taking this action. The purpose of this change is to amend the Utah hazardous waste rules in accordance with the final rule published by EPA so that the Utah hazardous waste rules remain equivalent to the federal regulations and ensure that Utah maintains its primacy for the hazardous waste program in Utah. |
| <b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>   |
| The change to Section R315-260-10 is the addition of the definition of Aerosol Can and an update to the definition of Universal Waste. In addition, the Division of Waste Management and Radiation Control, Waste Management (Division) has corrected typographical and formatting errors in this rule.  |

# WASTE MANAGEMENT AND RADIATION CONTROL BOARD

## Executive Summary Clean Harbors Aragonite, LLC (CHA) December 9, 2021

|   |  |
|---|--|
| <b>What is the issue before the Board?</b>                          | This is a proposed Stipulation and Consent Order (SCO), No. 2106050, to resolve Notice of Violation (NOV) No. 2102003, issued to CHA on March 26, 2021.  |
| <b>What is the historical background or context for this issue?</b> | <p>The NOV was based on information documented during an inspection at the facility on September 9 through October 1, 2020, and several self-reported notices of noncompliance for the time period of October 1, 2019, to September 30, 2020 (fiscal year 2020).</p> <p>The violations noted in the NOV have been resolved.</p> <p>The SCO includes a penalty of \$42,806.00. Half of this penalty will be paid in cash and the other half may be credited toward a SEP wherein CHA transports and disposes of confiscated vaping devices from schools in Utah.</p> <p>Copies of the NOV, the SCO, and the penalty narrative worksheets are included in this Board packet.</p> |
| <b>What is the governing statutory or regulatory citation?</b>      | §19-6-104 of the Utah Solid and Hazardous Waste Act authorizes the Board to issue orders and approve or disapprove settlements negotiated by the Director with a civil penalty over \$25,000.  |
| <b>Is Board action required?</b>                                    | No. A 30-day public comment period is currently underway. Following the comment period, this matter will be brought before the Board for action in a future meeting.   |
| <b>What is the Division Director's recommendation?</b>              | N/A  |
| <b>Where can more information be obtained?</b>                      | For technical information, please contact Rick Page at (801) 536-0230. For legal information, please contact Connie Nakahara at (385) 414-0450.  |

DSHW-2021-022062

Attachments: DSHW-2021-001422 (Notice of Violation No. 2102003)  
DSHW-2021-008551 (Stipulation and Consent Order No. 2106050)  
DSHW-2021-008553 (Narrative)



State of Utah

SPENCER J. COX  
Governor

DEIDRE HENDERSON  
Lieutenant Governor

Department of  
Environmental Quality

Kimberly D. Shelley  
Executive Director

DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL  
Ty L. Howard  
Director

March 26, 2021

William Simmons, General Manager  
Clean Harbors Aragonite, LLC  
P.O. Box 1339  
Grantsville, UT 84029

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7005 0390 0000 7508 6798

RE: Notice of Violation No. 2102003  
UTD 981 552 177

Dear Mr. Simmons:

Enclosed is a **NOTICE OF VIOLATION (NOV)** Number **2102003**, based on findings documented by Division of Waste Management and Radiation Control inspectors during a compliance inspection on September 9 through October 1, 2020.

You are hereby requested to submit to this office on or before April 26, 2021, written verification that the violations documented in the NOV have been corrected. Please include a description of the corrective actions implemented to ensure that these violations do not recur. Your response to this request will not constitute an administrative contest to the attached NOV.

You have 30 days from the date of the attached NOV to contest it in the manner and within the time period prescribed by R305-7-303 of the Utah Administrative Code.

If you have any questions, please call Rick Page at (801) 536-0230.

Sincerely,

Ty L. Howard, Director  
Division of Waste Management and Radiation Control

(Over)

DSHW-2021-001422

195 North 1950 West • Salt Lake City, UT  
Mailing Address: P.O. Box 144880 • Salt Lake City, UT 84114-4880  
Telephone (801) 536-0200 • Fax (801) 536-0222 • T.D.D. (801) 536-4284  
[www.deq.utah.gov](http://www.deq.utah.gov)  
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TLH/RAP/ar

Enclosure: Notice of Violation Number 2102003

c: Jeff Coombs, EHS, Health Officer, Tooele County Health Department  
Bryan Slade, Environmental Health Director, Tooele County Health Department  
Annette Maxwell, U.S. EPA, Region VIII, ENF-R  
Connie Nakahara, Assistant Attorney General, Office of Utah Attorney General (Email)  
Deborah Ng, Division of Waste Management and Radiation Control, UDEQ  
Adam Wingate, Division of Waste Management and Radiation Control, UDEQ  
Boyd Swenson, Division of Waste Management and Radiation Control, UDEQ



---oo0oo---

|                              |   |                            |
|------------------------------|---|----------------------------|
| In the Matter of:            | : | <b>NOTICE OF VIOLATION</b> |
|                              | : |                            |
| Clean Harbors Aragonite, LLC | : | <b>No. 2102003</b>         |
| UTD 981 552 177              | : |                            |

---oo0oo---

This **NOTICE OF VIOLATION** is issued by the Director of the Division of Waste Management and Radiation Control (Director) pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.* The Director has authority to issue such NOTICES in accordance with Utah Code § 19-6-112.

### **FINDINGS**

1. Clean Harbors Aragonite, LLC (CHA) is a Limited Liability Company incorporated in the state of Delaware and registered to do business in the State of Utah, and is a subsidiary of Clean Harbors Environmental Services, Inc., a corporation incorporated in the state of Massachusetts and registered to do business in the State of Utah.
2. The Aragonite facility is a commercial hazardous waste incinerator, transfer station, and storage facility located in Tooele County, Utah. CHA operates the Aragonite facility under the provisions of a State-issued Hazardous Waste Part B Permit (the Permit).
3. CHA is a "person" as defined in Utah Code §19-1-103(4) and is subject to all applicable provisions of the Act, the Utah Administrative Code (UAC) (the Rules) and the Permit issued to CHA as owner and operator of the Aragonite facility.
4. On March 30, 1990, the Director issued the Permit to CHA to operate a hazardous waste treatment and storage facility. The Director renewed and reissued the Permit, effective September 28, 2012.
5. CHA generates, treats, and stores listed and characteristic hazardous waste as defined by R315-261 UAC at the Aragonite facility.
6. Pursuant to Utah Code § 19-6-109, authorized representatives of the Director conducted a hazardous waste inspection at the Aragonite facility from September 9 through October 1, 2020 (the FY2020 inspection) and documented the following findings. In addition, CHA self-reported several non-compliance issues during the 2020 fiscal year (October 1, 2019, through September 30, 2020) (FY2020).
7. Condition 2.D of the Permit requires CHA to comply with the waste analysis procedures specified in the Waste Analysis Plan (WAP) in Attachment 1 of the Permit. Section 3.0 of the WAP requires that CHA categorize each waste according to the waste categories in Table 2 of the WAP.
  - 7.01. On September 23, 2020, CHA notified the Director (DSHW-2020-013923) that on September 21, 2020, the facility discovered that it had used improper Waste Analysis Plan characterization codes for several containers of APHIS waste.

8. Condition 2.G of the Permit requires CHA to comply with the personnel training procedures in Attachment 4 of the Permit. Section 2.0 of Attachment 4 of the Permit requires that the required training occur within six months of the date of hire.
  - 8.01. During the FY2019 inspection, the inspector(s) documented the following. Six months after the date of hire for Stephanie Perez was October 8, 2019. Course SS2000 (Permit Training) was not completed until January 20, 2020.
9. Condition 2.K of the Permit requires that CHA comply with the manifest requirements of R315-264-71 and R315-264-72 UAC. R315-264-71(a)(1) UAC requires that CHA sign the manifest to certify that the hazardous waste covered by the manifest was received. R315-264-72(c) UAC requires that upon discovering significant discrepancies, CHA shall attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. R315-264-72(f) UAC specifies that for rejected wastes that are sent back to the generator, CHA is required to prepare a new manifest in accordance with R315-262-20(a) UAC. R315-262-20(a)(1) UAC requires that a generator who offers for transport a rejected hazardous waste load, shall prepare a manifest. R315-262-23 UAC requires the generator to sign the manifest, obtain the signature of the initial transporter, retain one copy, and send the other copies with the transporter. R315-264-76(a) UAC specifies that if CHA accepts any hazardous waste from an off-site source without an accompanying manifest, then CHA shall prepare and submit an unmanifested waste report to the Director within 15 days after receiving the waste.
  - 9.01. On December 12, 2019, CHA notified the Director (DSHW-2019-017344) that on December 6, 2019, the facility discovered that it had not reported two instances of unresolved manifest discrepancies within 15 days of receiving the waste.
  - 9.02. On January 10, 2020, CHA notified the Director (DSHW-2020-000465) that on January 7, 2020, the facility discovered that it did not report an unresolved manifest discrepancy within 15 days of receiving the waste.
  - 9.03. On July 21, 2020, CHA notified the Director (DSHW-2020-010467) that on July 20, 2020, the facility discovered that it had not reported an unresolved manifest discrepancy within 15 days of receiving the waste.
  - 9.04. During the FY2020 inspection, the inspector(s) documented the following. Manifest 014567867FLE indicated that drum 89469858 was being rejected back to the generator. It was shipped off site, but it did not go back to the generator. Instead, it was repacked by Clean Harbors Field Services at the Clive facility and returned to Aragonite that same day. A new manifest was not created to return the drum to Aragonite; it was shipped back with the reject manifest (014567867FLE). That manifest was not signed by CHA as the receiving facility.
  - 9.05. During the FY2020 inspection, the inspector(s) documented the following. CHA rejected drum 89510366 back to the generator on October 12, 2020. A manifest was not prepared and shipped with the drum. It was placed on the wrong truck and ended up at the Clean Harbors San Jose facility without a manifest.
  - 9.06. During the FY2020 inspection, the inspector(s) documented the following. Drum 89510366 was shipped back to the Aragonite facility from the Clean Harbors San Jose facility. It was

not shipped with a manifest. CHA accepted this waste on December 2, 2020. CHA later created manifest 014150039FLE to show the tracking of this shipment. CHA did not submit an unmanifested waste report to the Director.

- 9.07. During the FY2020 inspection, the inspector(s) documented the following: Drum 85771762 was shipped from Aragonite to Kinsbursky Brothers in California on manifest 014567637FLE. Kinsbursky Brothers rejected the drum and sent it back to Aragonite on manifest 020123811JJK. CHA did not sign manifest 020123811JJK acknowledging that it received the drum.
10. Condition 3.B.6 of the Permit requires CHA to comply with the provisions specified in Attachment 8 of the Permit (Waste Storage, Processing, and Tracking). Section 1.2 of Attachment 8 of the Permit specifies the requirements for rejected wastes. It specifies that rejected wastes not remain on-site for longer than 60 days unless an extension has been granted by the Director. It also requires that if CHA decides to accept a container of waste that was initially rejected, these containers will be identified in the waste tracking system such that they are captured by the Drum Reject Report.
  - 10.01. On April 3, 2020, CHA notified the Director (DSHW-2020-005327) that on March 27, 2020, the facility discovered that it had failed to ship four rejected waste containers off site or make a determination to process them within 60 days, and no extension had been given by the Director.
  - 10.02. On May 19, 2020, CHA notified the Director (DSHW-2020-007603) that on May 14, 2020, the facility discovered that it had failed to ship a rejected waste container off site within 60 days, and no extension had been given by the Director.
  - 10.03. During the FY2020 inspection, the inspector(s) documented the following. Four containers of waste (84352960, 84352961, 85123528, and 83134721) that were initially rejected, were later accepted, and processed at the facility. They were not on the Drum Reject Report in waste tracking.
11. Condition 3.C.4. of the Permit specifies that cyanide bearing waste be stored in buildings 68, 69-North, and 69-South, but may also be stored on the breezeway for up to ten days as part of the process for staging feed to the incinerator.
  - 11.01. During the FY2020 inspection, the inspector(s) documented the following. Two drums of cyanide waste (88718538 and 88718539) were stored on the breezeway for longer than ten days (19 days).
12. Condition 3.D.15. of the Permit requires that containers be stacked neatly, wrapped, or both, to provide stability and in a manner that will not cause them to fall or leak.
  - 12.01. During the FY2020 inspection, the inspector(s) documented the following. A pallet of shrink-wrapped electronics was stacked on top of a tote in row F of Building E3. The pallet was not all the way on the rigid frame of the tote, causing it to tip.
13. Condition 3.D.22 of the Permit requires that CHA store infectious waste at or below 40 degrees Fahrenheit if it is onsite longer than seven days.

- 13.01. On October 24, 2019, CHA notified the Director (DSHW-2019-013784) that on October 16, 2019, the facility discovered that between September 25, 2019 and October 16, 2019, it had containers of infectious waste that had been on site longer than 7 days that had not been placed into refrigerated storage.
- 13.02. On April 3, 2020, CHA notified the Director (DSHW-2020-005328) that on March 30, 2020, the facility discovered that it did not store an infectious waste container that was on site longer than 7 days in storage that was at or below 40 degrees Fahrenheit.
- 13.03. On August 18, 2020, CHA notified the Director (DSHW-2020-011981) that on August 14, 2020, the facility discovered that a mobile storage rack of 27 sharps containers had not been processed or placed into refrigerated storage within 7 days of arriving at the facility.
14. Condition 3.D.23. of the Permit requires that infectious waste be incinerated as soon as possible, but not to exceed 60 days after collection from the generator.
- 14.01. During the FY2020 inspection, the inspector(s) documented the following. At least eight containers of infectious wastes (89469858, 85186030, 81694917, 84352960, 84352961, 84604915, 84604916, and 89510366) were not incinerated within 60 days after collection from the generator.
15. Condition 4.B.5. of the Permit requires that CHA maintain the tank systems and ancillary equipment in good repair. Condition 4.D.14. of the Permit requires CHA to prevent spills and overflows from the tanks. Condition 4.D.17. of the Permit specifies that if a secondary containment area contains any material, it will be emptied within 24 hours of discovering the contents.
- 15.01. During the FY2020 inspection, the inspector(s) documented the following: There was a small stream of water on the floor of the bulk solids tunnel leading toward a small pool of water on the floor under the north stairs. It was coming from the first two gaps between the I-beams under the northwest corner of T-404B West. The gap between the I-beams under the far southwest section of T-403A was wet but not running down into the tunnel. This same area under the bulk solids tanks has been wet or had liquid running in it during each of the past three annual inspections. There were a lot of salts built up where water had accumulated under the tank and had run down the wall in that area.
16. Condition 4.D.21 of the Permit specifies that the concentration of oxygen in the hydrocarbon vent system be maintained below 5%. It further specifies that if the oxygen concentration exceeds 5%, corrective action will immediately be taken to reduce the oxygen concentration to below 5%, and the cause of the elevated oxygen concentration, and the corrective actions taken, shall be noted in the operating record.
- 16.01. During the FY2020 inspection, the inspector(s) documented the following: There was no *System Trouble Report* or other documentation outlining the cause of the elevated oxygen concentration, and the corrective actions taken, for the oxygen excursion that occurred on January 1, 2020.
17. Condition 5.A.6 of the Permit requires that CHA comply with the provisions specified in the Fume Management Plan, Attachment 14 of the Permit. Section 2.1 of Attachment 14 of the Permit specifies that the flow of combustion air will be maintained above 12,000 acfm when the vacuum pump and dilution air fan are operating.

- 17.01. During the FY2020 inspection, the inspector(s) documented the following. There were three instances noted (January 23, 2020, April 14, 2020, and May 18, 2020) where dilution air fan was operating, and the combustion air flow was less than 12,000 acfm.
18. R315-268-3(c) UAC of the Rules prohibits the combustion of wastes with the codes listed in Appendix XI of Rule R315-268 UAC. Appendix XI of R315-268 UAC includes the waste codes D008 (toxicity characteristic for lead) and D009 (toxicity characteristic for mercury).
- 18.01. On November 4, 2019, CHA notified the Director (DSHW-2019-014902) that on October 28, 2019, the facility discovered that on April 13, 2019, container 78428206, containing lead acid batteries, was inadvertently incinerated. It carried the D008 waste code.
- 18.02. On November 25, 2019, CHA notified the Director (DSHW-2019-016245) that on November 16, 2019, the facility discovered that container 83096922, containing mercury chloride and no organics, had been inadvertently incinerated. It carried the D009 waste code.

## **DETERMINATION OF VIOLATIONS**

In accordance with Utah Code § 19-6-101, *et seq.*, and based on the foregoing FINDINGS, CHA has violated provisions of the Rules, the Act, and the Permit applicable to its facility. Specifically, CHA has violated the following:


1. Condition 2.D of the Permit by using improper WAP characterization codes for several containers of APHIS waste (see Finding 7).
2. Condition 2.G of the Permit by failing to complete the required training within six months of the date of hire for Stephanie Perez (see Finding 8).
3. Condition 2.K of the Permit, R315-264-71, R315-264-72, and R315-264-76 of the Rules by failing to sign the manifest to certify that the hazardous waste covered by the manifest was received; by failing to submit to the Director a letter describing the discrepancy and attempts to reconcile it within 15 days after receiving the waste; by offering for transport a rejected hazardous waste without preparing a manifest, signing the manifest, obtaining the signature of the initial transporter, retaining one copy, and sending the other copies with the transporter; and by failing to prepare and submit an unmanifested waste report to the Director within 15 days after receiving the waste (see Finding 9).
4. Condition 3.B.6 and Attachment 8 of the Permit by holding rejected wastes on-site for longer than 60 days; and by failing to identify containers that are accepted after initially being rejected on the Drum Reject Report in the waste tracking system (see Finding 10).
5. Condition 3.C.4. of the Permit by storing cyanide bearing waste on the breezeway for longer than ten days (see Finding 11).
6. Condition 3.D.15. of the Permit by stacking containers in an unstable manner (see Finding 12).
7. Condition 3.D.22 of the Permit by failing to store infectious waste at or below 40 degrees Fahrenheit when it was onsite longer than seven days (see Finding 13).
8. Condition 3.D.23. of the Permit by failing to incinerate infectious waste within 60 days after collection from the generator (see Finding 14).
9. Condition 4.B.5., Condition 4.D.14., and Condition 4.D.17. of the Permit by failing to maintain the bulk solids tank systems and ancillary equipment in good repair; by failing to prevent spills and overflows from the bulk solids tanks; and by failing to empty the secondary containment area under the bulk solids tanks within 24 hours of discovering the contents (see Finding 15).
10. Condition 4.D.21 of the Permit by failing to immediately take corrective action to reduce the oxygen concentration to below 5% in the hydrocarbon vent system; and by failing to document the cause of the elevated oxygen concentration and the corrective actions taken (see Finding 16).
11. Condition 5.A.6 of the Permit by failing to maintain the flow of combustion air above 12,000 acfm when the vacuum pump and dilution air fan were operating (see Finding 17).
12. R315-268-3(c) UAC and Appendix XI of R315-268 of the Rules by incinerating prohibited wastes with the waste code of D008, toxicity characteristic for lead; and by incinerating prohibited wastes with the waste code of D009, toxicity characteristic for mercury (see Finding 18).

### **OPPORTUNITY FOR HEARING**

This NOTICE OF VIOLATION is effective immediately and shall become final unless CHA administratively contests it. Failure to contest this NOTICE OF VIOLATION in the manner and within the time period prescribed by Utah Administrative Code R305-7-303 constitutes a waiver of any right of administrative contest, reconsideration, review, or judicial appeal.

Utah Code Section 19-6-113(2) provides that violation of any order, plan, rule, or other requirement issued or adopted under Title 19, Ch. 6, Pt. 1 may be subject to a civil penalty of up to \$13,000 per day for each day of violation.

Dated this 26th day of March 2021.

By:  \_\_\_\_\_  
Ty L. Howard, Director  
Division of Waste Management and Radiation Control

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing NOTICE OF VIOLATION on the 26<sup>th</sup> day of March 2021 by US Certified Mail, Return Receipt Requested, to:

William Simmons, General Manager  
Clean Harbors Aragonite, LLC  
P.O. Box 1339  
Grantsville, UT, 84029

Alma Rosas     March 26, 2021



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|                                 |   |                                      |
|---------------------------------|---|--------------------------------------|
| In the Matter of:               | : | <b>STIPULATION AND CONSENT ORDER</b> |
|                                 | : |                                      |
| Clean Harbors Aragonite, LLC    | : | <b>No. 2106050</b>                   |
| Notice of Violation No. 2102003 | : |                                      |
| UTD 981 552 177                 | : |                                      |

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This **STIPULATION AND CONSENT ORDER** (CONSENT ORDER) is issued by the DIRECTOR OF THE UTAH DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.*

### **JURISDICTION**

1. The Director has jurisdiction over the subject matter of this CONSENT ORDER pursuant to Utah Code §§ 19-6-107 and 19-6-112 and jurisdiction over the Aragonite facility owned and operated by Clean Harbors Aragonite, LLC (CHA). CHA consents to and will not challenge issuance of this CONSENT ORDER or the Director's jurisdiction to enter and enforce this ORDER. CHA and the Director are parties to this agreement.
2. The Waste Management and Radiation Control Board has authority to review and approve or disapprove this CONSENT ORDER pursuant to Utah Code § 19-6-104(1)(e).

### **FINDINGS**

3. CHA is a Delaware Limited Liability Company registered to do business in the State of Utah and is a subsidiary of Clean Harbors, Inc., a Massachusetts corporation also registered to do business in the State of Utah. CHA is the owner and operator of the Aragonite facility.
4. The Aragonite facility is a commercial hazardous waste incinerator, transfer, and storage facility located in Tooele County, Utah, and is operated under the provisions of the State-issued Hazardous Waste Part B Permit issued on March 30, 1990, as modified (the Permit). The Permit was renewed and reissued most recently on September 28, 2012.
5. CHA is a "person" as defined in Utah Code § 19-1-103(4) and is subject to all applicable provisions of the Utah Administrative Code (the Rules), the Act, and the Permit.
6. Authorized representatives of the Director conducted a hazardous waste inspection at the Aragonite facility from September 9 through October 1, 2020 (the FY2020 inspection). In addition, the facility self-reported several non-compliance issues during the 2020 fiscal year (October 1, 2019, through September 30, 2020). Based on findings documented during the FY2020 inspection and the self-reported non-compliance, the Director issued NOTICE OF VIOLATION No. 2102003 (the NOV) on March 26, 2021, alleging violations by CHA of its Permit and the Utah Administrative Code (DSHW-2021-001422).
7. CHA filed a response to the NOV on April 23, 2021 (DSHW-2021-006204).

8. On August 24, 2021, CHA filed a request for agency action (RFAA) stating that CHA is “. . . invoking the jurisdiction of the agency by contesting the validity of the . . . Notice of Violation after it was issued on March 26, 2021, and the Proposed Stipulation and Consent Order on July 27, 2021, . . .”
9. Notwithstanding issuance of the NOV, the Director acknowledges improvement in compliance with the Permit and commends CHA’s effort to improve operational practices.
10. Although the collective administrative and operational requirements in the Permit are those determined necessary to achieve compliance with the Act and the Rules, the Director acknowledges that if CHA immediately addresses certain minor administrative violations and implements procedures to prevent reoccurrence, an individual minor violation by itself does not impact the purpose of the Permit to protect human health and the environment.
11. Using enforcement discretion, the Director did not cite CHA for all minor violations documented during the 2020 inspection in the NOV.
12. In accordance with the Civil Penalty Policy, Utah Admin. Code R315-102 of the Rules, which considers such factors as the gravity of the violation, the extent of deviation from the rules, the potential for harm to human health and the environment, good faith efforts to comply, history of noncompliance, and other factors, the Director calculated and proposed a penalty based on the violations alleged in NOV No. 2102003.
13. The Director reduced the calculated penalty as a result of self-reporting non-compliance. The Director also reduced the calculated penalty as a result of improvement with compliance of the Permit.

#### **STIPULATION AND CONSENT ORDER**

14. This CONSENT ORDER has been negotiated in good faith and the parties now wish to fully resolve Notice of Violation No. 2102003 without further administrative or judicial proceedings.
15. In full settlement of the violations alleged in NOV No. 2102003 (with the exception of Violation 9), CHA shall pay a penalty of \$42,806.00. CHA shall make payment as follows:
  - 15.01 A cash payment of \$21,403.00 shall be made within thirty days of the effective date of this CONSENT ORDER as described in ¶ 15.02.
  - 15.02 Payment shall be made to the State of Utah, Department of Environmental Quality, c/o Director, Utah Division of Waste Management and Radiation Control, P.O. Box 144880, Salt Lake City, Utah 84114-4880.
  - 15.03 The amount of \$21,403.00 may be credited to CHA if, within one year of the effective date of this CONSENT ORDER, it completes a Supplemental Environmental Project (SEP) related to ensuring the proper transportation, tracking, and disposal of hazardous waste collected from schools located within the State of Utah. To perform the SEP, at its costs, the following services shall be provided to certain schools identified by the Director: (a) CHA shall provide receptacles for the collection of confiscated vaping devices at Utah schools; and (b) CHA shall provide for transportation and disposal of these confiscated devices. To document appropriate penalty credit of the SEP, within 30 days of completing this SEP, CHA shall

provide breakdown of its costs to implement the SEP to the Director outlining the costs involved, demonstrating that it equals or exceeds the credit specified above.

- 15.04 If CHA elects to forego the SEP described in ¶15.03, fails to complete the SEP, or fails to demonstrate that its expenditures equal or exceed the credit specified above, CHA shall make a cash payment to the Director of the difference between CHA's costs and \$21,403.00 as described in ¶ 15.02.
16. Notwithstanding that the Director and CHA disagree whether Violation 9 of the NOV (related to the bulk solids tank systems and ancillary equipment) is a violation of the Permit, CHA has corrected this bulk solids tank issue. The Director agrees to defer the calculated penalty of \$1,170.00 relating to Violation 9 of the NOV if CHA maintains the bulk solids tunnel secondary containment system in compliance with Condition 4.D.17 and Attachment 3 of the Permit, documents all liquids found in the tunnel in inspection logs, and immediately initiates corrective action required in the Permit.
- 16.01 If CHA complies with ¶ 16 for a minimum of one year from the effective date of this CONSENT ORDER, the Director agrees to vacate the deferred penalty.
- 16.02 If a subsequent notice of violation becomes final that cites CHA for failure to maintain the bulk solids tunnel secondary containment system in compliance with Condition 4.D.17 or Attachment 3 of the Permit within one year from the effective date of this CONSENT ORDER, CHA shall pay the deferred penalty of \$1,170.00 as described in ¶ 15.02.
17. Prior to issuance of the next notice of violation, if any, the Director agrees to provide CHA a *Notice of Intent to Cite Violations (Notice)* for each certain administrative minor violation that is not a reoccurring violation in which the Director determines (1) if the violation was immediately corrected and (2) certain changes to operational practices are implemented that there would be no direct impact to safety and protection of human health and the environment. If within 30 days of receiving the *Notice*, CHA submits to the Director (1) a written certification that it immediately corrected the violation listed in the *Notice*; (2) a description of the procedures CHA implemented to prevent reoccurrence; and (3) a commitment to conduct an audit of its recordkeeping to identify and correct future minor administrative violations at least annually, the Director agrees to find that specific minor administrative violation resolved and agrees, using enforcement discretion, not to issue a notice of violation for that specific violation.
18. As this CONSENT ORDER resolves NOV No. 2102003, within 30 days of the effective date of this CONSENT ORDR, CHA shall file a motion to withdraw its RFFA related to this matter, filed on August 24, 2021.

### **EFFECT OF CONSENT ORDER**

19. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The obligations in this CONSENT ORDER apply to and are binding upon the Division of Waste Management and Radiation Control and upon CHA and any of CHA's successors, assigns, or other entities or persons otherwise bound by law.
20. The stipulations contained herein are for the purposes of settlement and shall not be considered admissions by any party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of Utah of its right to initiate enforcement action, including civil penalties, against CHA in the event of future non-compliance

with this CONSENT ORDER, with the Act, with the Rules, or with the Permit; nor shall the State of Utah be precluded in any way from taking appropriate action should such a situation arise again at the CHA facility. However, entry into this CONSENT ORDER shall relieve CHA of all liability for violations which did arise or could have arisen with respect to the allegations contained in NOV No. 2102003.

#### **EFFECTIVE DATE**

21. This CONSENT ORDER shall become effective upon the date of execution by the Director.

#### **PUBLIC PARTICIPATION**

22. This CONSENT ORDER shall be subject to public notice and comment for a period of at least 30 days ("Comment Period") in accordance with Utah Admin. Code R315-124-34. The Director reserves the right to withdraw or withhold its consent if any comment received during the Comment Period disclose facts or consideration indicating the CONSENT ORDER is inappropriate, improper, or inadequate.

#### **SIGNATORY**

23. The undersigned representative of CHA certifies he is authorized to enter into this CONSENT ORDER and to execute and legally bind Clean Harbors Aragonite, LLC.

Pursuant to the Utah Solid and Hazardous Waste Act (the Act), Utah Code § 19-6-101, *et seq.*, in the *Matter of CHA Notice of Violation No. 2102003*, the parties hereto mutually agree and consent to STIPULATION AND CONSENT ORDER 2106050 as evidenced below:

CLEAN HARBORS ARAGONITE, LLC

THE STATE OF UTAH  
DIVISION OF WASTE MANAGEMENT  
AND RADIATION CONTROL

\_\_\_\_\_  
Eric Gerstenberg, President

\_\_\_\_\_  
Douglas J. Hansen, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 1

violation description APHIS WAPCC

1. Gravity Based Penalty – \$155
  - (a) Potential for Harm – **MINOR** – The same, or similar, characterization was used to manage the waste as would have been required.
  - (b) Extent of Deviation – **MINOR** – Most of the waste was characterized properly.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – 30% reduction – CHA self-reported the violation.
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A – Although characterizing the waste properly was an issue on the previous (FY2019) NOV, significant improvement has been made.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – The economic benefit was negligible since the management of the waste would not have changed significantly.
5. Recalculation of Penalty based on New Information – Since this is a minor/minor violation and significant improvement has been made in this area, no penalty will be imposed.

**TOTAL: \$0**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number   2  

violation description **training**

1. Gravity Based Penalty – \$155
  - (a) Potential for Harm – **MINOR** – It was just one course, and it was completed late.
  - (b) Extent of Deviation – **MINOR** – Most of the training was completed as required.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A – Although personnel training deficiencies were an issue on the previous (FY2019) NOV, significant improvement has been made.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – There was no economic benefit since the training was conducted (late).
5. Recalculation of Penalty based on New Information – Since this is a minor/minor violation and significant improvement has been made in this area, no penalty will be imposed.

**TOTAL: \$0**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 3

violation description manifests

1. Gravity Based Penalty – \$1,560
  - (a) Potential for Harm – **MODERATE** – Shipping wastes without a manifest and not properly addressing discrepancies could lead to lost wastes and mismanagement. However, most manifests were done correctly.
  - (b) Extent of Deviation – **MINOR** – Most manifests were prepared, and discrepancies appropriately noted.
2. Multiple/Multi-day – \$1,560
  - (a) Number of Days of Violation or Number of Violations – 7 – There were seven separate and distinct violations cited in the NOV (use the gravity-based matrix rather than the multi-day matrix). Three of the seven violations were for reporting issues (use the low end of the penalty range).
3. Adjustment Factors (if applicable)
  - (a) Good faith – 13% reduction – CHA self-reported three of the seven violations.
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – 15% increase – The same or similar issues were cited on the NOV covering FY2019.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – The paperwork was created after-the-fact, so there would have been no economic benefit.
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$11,154**

**NARATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 4

violation description rejects

1. Gravity Based Penalty – \$5,270
  - (a) Potential for Harm – **MAJOR** – Rejected wastes are usually wastes that present some type of hazard that CHA is not prepared to manage. Having the rejected waste on site for an extended period of time increases the risks these waste pose.
  - (b) Extent of Deviation – **MINOR** – Most of the reject containers are managed in a timely manner.
2. Multiple/Multi-day – \$5,270
  - (a) Number of Days of Violation or Number of Violations – 3 – There were three separate and distinct violations cited in the NOV (use the gravity-based matrix rather than the multi-day matrix). One of the violations involved rejected wastes that were later accepted (use the low end of the penalty range).
3. Adjustment Factors (if applicable)
  - (a) Good faith – 20% reduction – CHA self-reported two of the three violations.
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – 15% increase – The same or similar issues were cited on the NOV covering FY2019.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – The economic benefit was negligible since the drums were shipped off site (late).
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$15,020**



**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 5

violation description **cyanide waste**

1. Gravity Based Penalty – \$155
  - (a) Potential for Harm – **MINOR** – Storing cyanides in an area not designated for them could lead to incompatibility issues. However, there were relatively few cyanides stored inappropriately for a relatively short period of time.
  - (b) Extent of Deviation – **MINOR** – Most of the cyanides are stored in properly designated areas.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A – Although similar deficiencies were an issue on the previous (FY2019) NOV, significant improvement has been made.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – There would be no economic benefit since there were appropriate places available to store the waste.
5. Recalculation of Penalty based on New Information – Since this is a minor/minor violation and significant improvement has been made in this area, no penalty will be imposed.

**TOTAL: \$0**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 6

violation description **container stacking**

1. Gravity Based Penalty – \$155
  - (a) Potential for Harm – **MINOR** – Improper stacking could lead to containers falling and spilling. However, the problem only occurred with one pallet and was quickly remedied.
  - (b) Extent of Deviation – **MINOR** – CHA properly stacks containers most of the time.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A – Although similar deficiencies were an issue on the previous (FY2019) NOV, significant improvement has been made.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – The economic benefit was evaluated and found to be insignificant.
5. Recalculation of Penalty based on New Information – Since this is a minor/minor violation and significant improvement has been made in this area, no penalty will be imposed.

**TOTAL: \$0**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 7

violation description **infectious waste >40°F**

1. Gravity Based Penalty – \$1,170
  - (a) Potential for Harm – **MINOR** – Most of the containers were out of refrigeration for a relatively short period of time beyond the requirement.
  - (b) Extent of Deviation – **MAJOR** – There were a substantial number of containers out of compliance.
2. Multiple/Multi-day – \$1,170
  - (a) Number of Days of Violation or Number of Violations – 3 – There were three separate and distinct violations cited in the NOV (use the gravity-based matrix rather than the multi-day matrix).
3. Adjustment Factors (if applicable)
  - (a) Good faith – 30% reduction – CHA self-reported the violations.
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – Refrigerated storage was available and most of the waste was outside of refrigerated storage for only a short period of time, so the economic benefit would be minimal.
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$2,457**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 8

violation description **infectious waste >60 days**

1. Gravity Based Penalty – \$520
  - (a) Potential for Harm – **MINOR** – Although the waste was not incinerated in a timely manner, some of the waste was in refrigerated storage during that time.
  - (b) Extent of Deviation – **MODERATE** – Some of the containers were not incinerated until significantly beyond the required limit.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – There would be no economic benefit to holding on to these containers, rather than incinerating them in a timely manner.
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$520**

**NARATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 9

violation description **bulk solids tanks**

1. Gravity Based Penalty – \$1,170
  - (a) Potential for Harm – **MINOR** – The material in the secondary containment was likely not waste, so the tanks were likely intact.
  - (b) Extent of Deviation – **MAJOR** – There was a significant amount of wet area and, judging by the residue, there had been a significant amount of liquid in the tunnel for a substantial period of time.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – Any costs would be associated with identifying and stopping the source of the liquid. Since the source of the liquid is not likely from inside the tanks, there would be no cost associated with removing the waste and repairing the tanks. Other costs would be delayed costs and are believed to be minimal.
5. Recalculation of Penalty based on New Information – CHA and the Division disagree on whether this is a violation. The issue has been corrected. Any penalty will be deferred pending compliance for one year.

**TOTAL: \$1,170 (deferred)**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 10

violation description **O<sub>2</sub> >5% in vent system**

1. Gravity Based Penalty – \$2,080
  - (a) Potential for Harm – **MODERATE** – Elevated levels of oxygen could produce an explosive atmosphere.
  - (b) Extent of Deviation – **MINOR** – Most of the incidents of elevated oxygen concentration in the hydrocarbon vent system are investigated and documented.
2. Multiple/Multi-day – N/A – There was only one citation in the NOV.
  - (a) Number of Days of Violation or Number of Violations – 1
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A – Although similar deficiencies were an issue on the previous (FY2019) NOV, significant improvement has been made.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – The economic benefit was evaluated and found to be insignificant.
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$2,080**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 11

violation description combustion air <12,000 acfm

1. Gravity Based Penalty – \$155
  - (a) Potential for Harm – **MINOR** – The length of time that there was inadequate air draw was minimal.
  - (b) Extent of Deviation – **MINOR** – The amount of air pulled was sufficient most of the time.
2. Multiple/Multi-day – \$155
  - (a) Number of Days of Violation or Number of Violations – 3 – There were three separate and distinct violations cited in the NOV (use the gravity-based matrix rather than the multi-day matrix).
3. Adjustment Factors (if applicable)
  - (a) Good faith – N/A
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – N/A
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – The economic benefit was evaluated and found to be insignificant.
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$465**

**NARRATIVE EXPLANATION TO SUPPORT  
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 2102003

violation number 12

violation description incinerate lead & mercury

1. Gravity Based Penalty – \$6,535
  - (a) Potential for Harm – **MAJOR** – Feeding prohibited wastes would increase the emissions of lead and mercury.
  - (b) Extent of Deviation – **MINOR** – The amount of prohibited waste fed was minimal.
2. Multiple/Multi-day – \$6,535
  - (a) Number of Days of Violation or Number of Violations – 2 – There were two separate and distinct violations cited in the NOV (use the gravity-based matrix rather than the multi-day matrix).
3. Adjustment Factors (if applicable)
  - (a) Good faith – 30% reduction – CHA self-reported the violations.
  - (b) Willfulness/Negligence – N/A
  - (c) History of Compliance or Noncompliance – 15% increase – This was an issue on the previous (FY2019) NOV.
  - (d) Ability to pay – N/A
  - (e) Other Unique Factors – N/A
4. Economic Benefit – There would be no economic benefit since the cost of incineration would likely be more than the cost of land disposal.
5. Recalculation of Penalty based on New Information – N/A

**TOTAL: \$11,110**