

UTAH COUNTY HEALTH DEPARTMENT  
UNDERGROUND STORAGE TANK REGULATIONS

Section 1. Introduction

The U.S. Environmental Protection Agency (EPA) has written regulations for many of the nations' underground storage tank (UST) systems. Many of these USTs, including their piping, are currently leaking. Many more are expected to leak in the future. Leaking USTs can threaten human safety and contaminate nearby surface and groundwater. Federal legislation seeks to safeguard our nation's groundwater resources because many of us depend on it for drinking water. The Environmental Protection Agency's UST rules were written such that existing local and state programs can be integrated into the new program. This outline describes an integration of the Utah County Health Department (UCHD) UST expertise with State of Utah and federal programs.

Section 2. Regulation Purpose

The purpose is to adopt and administer rules and regulations relating to USTs that insure minimal standards are maintained throughout Utah County.

Section 3. Methods

All inspections will be conducted by properly certified individuals (as required by R311-201, UCA). All new UST installations, repairs, upgrades, and closures will be inspected as they occur. Oversight of certified groundwater and soil samplers, and tank handlers during inspections will be provided. Certification of tank handler and soil and groundwater sampler, will be verified by UCHD. Oversight for compliance with closure plans (as required in R311-204,

adopted International Fire Code. The applicant shall insure that DEQ and also UCHD have received notice of closure as specified in section R311-204 of the DEQ Rules (State of Utah).

Section 8. UST Regulation Fees.

Fees may be charged to the owner or operator for all inspections and services necessary for the enforcement of this regulation and shall be paid to UCHD prior to the inspection or service. The fees shall be set and/or adjusted as needed by the Utah County Board of Health.

Section 9. Permit Suspension and Revocation.

A permit issued under Section 5 and 6 of these regulations may be suspended or revoked for any of the following:

- (a) Submission of incorrect or false information in an application.
- (b) Failure of the applicant to remove, handle, contain, transport, or dispose of USTs in accordance with these regulations and plans approved by UCHD.
- (c) Violation of any rule, regulation, restriction, or requirement concerning USTs adopted by UCHD as specified by DEQ and Utah County Board of Health.
- (d) Violation of any condition upon which the permit was issued.
- (e) Using non-certified personnel in the removal or installation of USTs.
- (f) Failure to provide information as requested by DEQ or UCHD in accordance with the provisions of these regulations.
- (g) Failure to permit DEQ and/or UCHD to conduct compliance inspections.
- (h) Failure to pay inspection or service fees.

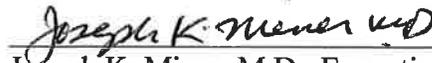
Section 9.1 Site Closure

UCHD shall immediately stop work on any UST project within its jurisdiction wherein a person, owner or operator does not have a UST closure/installation permit and approval issued by DEQ.

ADOPTED BY THE UTAH COUNTY BOARD OF HEALTH, this 28<sup>th</sup> day of July 2008.



Rulon Barlow, Chair  
Utah County Board of Health



Joseph K. Miner, M.D., Executive Director  
Utah County Health Department

**R311. Environmental Quality, Environmental Response and Remediation.****R311-200. Underground Storage Tanks: Definitions.****R311-200-1. Definitions.**

- (a) Refer to Section 19-6-402 for definitions not found in this rule.
- (b) For purposes of underground storage tank rules:
  - (1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.
  - (2) "Alternative Fuel" means a petroleum-based fuel containing:
    - (A) more than ten percent ethanol, or
    - (B) more than twenty percent biodiesel.
  - (3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".
  - (4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.
  - (5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.
  - (6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.
  - (7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.
  - (8) "Certificate" means a document that evidences certification.
  - (9) "Certification" means approval by the Director or the Board to engage in the activity applied for by the individual.
  - (10) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).
  - (11) "Change-in-service" means the continued use of an UST to store a non-regulated substance.
  - (12) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.
  - (13) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.
  - (14) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).
  - (15) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.
  - (16) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Director following the criteria in R311-211.
  - (17) "Department" means the Utah Department of Environmental Quality.
  - (18) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).
  - (19) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.
  - (20) "EPA" means the United States Environmental Protection Agency.
  - (21) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Director.

regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(43) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(44) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(45) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(46) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(47) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(48) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Director.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Director.

(49) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(50) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(51) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(52) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

(53) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(54) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(55) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(56) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(57) "UST inspection" is the inspection required by state and federal underground storage tank rules and

on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201. Certification by the Director under this Rule for tank, line and leak detector testing shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment or by training determined by the Director to be equivalent to the manufacturer training. The Director may issue a limited certification restricting the type of UST testing the applicant can perform.

(d) Groundwater and soil sampler. After December 31, 1989, no person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Director may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. After January 1, 1991, no person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

#### **R311-201-3. Application for Certification.**

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

(1) meets applicable eligibility requirements specified in Subsection R311-201-4 and

(2) will maintain the applicable performance standards specified in Subsection R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Director for determination of eligibility for certification. If the Director determines that the applicant meets the applicable eligibility requirements described in Subsection R311-201-4 and meets the standards described in Subsection R311-201-6, the Director shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Subsection R311-201-5.

#### **R311-201-4. Eligibility for Certification.**

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Director to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Director.

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

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related

documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets performance standards of 40 CFR Part 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing. This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Director. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Director. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director, and shall include instruction in the following areas: tank installation, preinstallation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An

requirements of that certification program.

(b) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank inspecting in this state;
- (3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Director within twenty-four hours;
- (4) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Director.
- (5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,
- (7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(c) UST Tester. An individual who performs UST testing in the State of Utah:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;
- (3) shall perform all work in a manner that there is no release of the contents of the tank;
- (4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Director within twenty-four hours;
- (5) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person;
- (6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;
- (8) shall perform work in a manner that the integrity of the underground storage tank system is maintained; and,
- (9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;
- (3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Director within twenty-four hours;
- (4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,
- (6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(e) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage

**R311-201-9. Revocation of Certification.**

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked. Procedures for revocation are specified in Rule R305-6.

**R311-201-10. Reciprocity.**

If the Director determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Section R311-201-3(c), as appropriate, whichever is first.

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

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

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

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

(b) The UST owner or operator shall provide documentation to the Director to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(d)(2). The Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

(A) have a general knowledge of UST systems;

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

(C) ensure that yearly UST fees are paid;

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

(E) make financial responsibility documents available to the Director as required; and

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

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

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

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

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

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);

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

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

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Director. The Director shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

- (i) successfully passing a nationally recognized UST operator examination approved by the Director, and
- (ii) successfully passing a Utah UST rules and regulations examination authorized by the Director. The Director shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Director, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

- (i) submitting a completed application form;
- (ii) paying any applicable fees; and
- (iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Director determines that the operator meets all the requirements for registration, the Director shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

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

- (A) lapsing of certificate of compliance;
- (B) failure to provide acceptable financial responsibility; or
- (C) failure to ensure that Class B and C operators are trained and registered.

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

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h); or

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

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Director.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-

- (5) whenever an alternative fuel is stored in the tank.
- (b) All notifications shall be submitted on the current approved notification form.
- (1) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.
- (2) Notifications submitted to meet the requirement of R311-203-2(a)(5) shall be submitted at least 10 days, or another time period approved by the Director, prior to storing an alternative fuel in the tank.
- (c) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:
  - (1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or
  - (2) provide separate notification to the Director within 60 days of the completion of the installation.

### **R311-203-3. New Installations, Permits.**

- (a) Certified UST installers shall notify the Director at least 10 days, or another time period approved by the Director, before commencing any of the following activities:
  - (1) the installation of a full UST system or tank only;
  - (2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
  - (3) the internal lining of a previously-existing tank;
  - (4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility where the structural integrity of the UST was required to be assessed, or where there is no documentation of a properly-working cathodic protection system on the UST within 10 years of the proposed upgrade;
  - (5) the installation of a bladder in a tank;
  - (6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
  - (7) the installation of a spill prevention or overfill prevention device;
  - (8) the installation of a leak detection monitoring system; and
  - (9) the installation of a containment sump or under-dispenser containment.
- (b) The UST installation company shall submit to the Director an UST installation permit fee of \$200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.
- (c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.
- (d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(c), an installation shall be considered complete when:
  - (1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or
  - (2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.
- (e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Director of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.
- (f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.
- (g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Director an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(3).

### **R311-203-4. Underground Storage Tank Registration Fee.**

secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

(A) at the submersible pump or other location where the piping connects to the tank;

(B) where the piping connects to a dispenser, or otherwise goes above-ground; and

(C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

(A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

(A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or

(B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

(A) be liquid-tight on its sides, bottom, and at all penetrations;

(B) be compatible with the substance conveyed by the piping; and

(C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Director documentation to show that the requirements of Subsections (a) and (b) do not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

(B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

being removed from the ground with the facility identification number and information about previously contained substances.

(1) Removed tanks which have contained motor fuels or other regulated products, except leaded motor fuels, must be labeled with letters at least two inches high which read:

"CONTAINED (UNLEADED GASOLINE, DIESEL OR OTHER AS APPROPRIATE), FLAMMABLE. REMOVED: MONTH/DAY/YEAR."

(2) Removed tanks which have contained leaded motor fuel, or whose service history is unknown, must be labeled with letters at least two inches high which read:

"CONTAINED LEADED GASOLINE. HEATING RELEASES LEAD VAPORS, FLAMMABLE. REMOVED: MONTH/DAY/YEAR."

(b) Removed tanks shall be expeditiously disposed of as regulated underground storage tanks by the following methods:

(1) The tank may be cut up after the interior atmosphere is first purged or inerted.

(2) The tank may be crushed after the interior atmosphere is first purged or inerted.

(3) The tank may not be used to store food or liquid intended for human or animal consumption.

(4) The tank may be disposed of in a manner approved by the Director.

(c) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

#### **R311-204-4. Closure Notice.**

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

(b) Owners or operators of underground storage tanks which are permanently closed or have a change-in-service after December 22, 1988 shall submit a completed closure notice form and the following information within 90 days after tank closure:

(1) All results from the closure site assessment conducted in accordance with Section R311-205, including analytical laboratory results and chain of custody forms.

(2) Effective January 1, 1993, a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include: scale, north arrow, streets, property boundaries, building structures, utilities, underground storage tank system location, location of any contamination observed or suspected during sampling, location and volume of any stockpiled soil, the extent of the excavation zone, and any other relevant features. All sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(c) Owners and operators of underground storage tanks that are temporarily closed for a period greater than three months shall submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

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

#### **R311-204-5. Remediation.**

(a) Any UST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a Certified UST Consultant, except as outlined in sections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii), and R311-204-5(b).

(b) At the time of UST closure, a certified UST Remover may overexcavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the Director, in addition to the minimum amount required for closure of the UST. This overexcavation may be performed without the supervision of a certified UST Consultant. Appropriate confirmation samples must be taken by a certified groundwater and soil sampler in accordance with R311-201 for the purpose of determining the extent and degree of contamination.

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

(10) When conducting environmental sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as outlined in compliance schedules, or as determined by the Director. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the Director, may be used to satisfy requirements of determining native soil type.

(11) Other types of environmental or quality assurance samples may be required as determined by the Director.

(b) Site Assessment Protocol for UST Closure.

(1) The appropriate number of environmental samples, as described in Subsection R311-205-2(b)(4) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping or dispenser island. Any other samples required by Subsection R311-205-2(a) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2(b)(4) shall be collected from the unsaturated zone immediately above the capillary fringe. Groundwater samples shall be collected using proper surface water collection techniques, from a properly installed groundwater monitoring well, or as determined by the Director. All environmental samples shall be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2(d).

(2) One soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental samples, at each tank and product piping area. For all dispenser islands, only one representative sample to determine native soil type is required. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

(3) For purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.

(4) Environmental Sampling Protocol for UST closures:

(A) For a tank area containing one UST, one soil sample shall be collected at each end of the tank. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(B) For a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(C) Product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections and fittings, at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(D) For dispenser islands, environmental samples shall be collected from the middle of each dispenser island. Additional environmental samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.

(c) Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program.

(1) Owners or operators wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation shall perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a). The tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(2) The owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program. The Director shall review and approve the site check plan prior to its implementation. The site check shall meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2(b), or as determined by the Director on a site-specific basis. Additional sampling may be required by the

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

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

- (1) meet all requirements for participation in the Environmental Assurance Program, or
- (2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

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

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

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

- (1) the owner or operator has a certificate of registration;
- (2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;
- (3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;
- (4) the owner or operator has submitted a letter to the Director stating that based on customary business inventory practices standards there has been no release from the tank;
- (5) the owner or operator has submitted a completed application according to a form provided and approved by the Director, and has declared the financial assurance mechanism that will be used;
- (6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees; and
- (7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(3).

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

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

(b) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the Director, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(c) In accordance with Subsection 19-6-411(6), the Director may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

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

(e) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The Director may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Director.

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

(C) Auditing tank throughput may be accomplished by any method approved by the Director.

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

(f) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the

CFR 280.95.

(6) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance.

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

(8) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Director within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Director within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Director may audit or order an audit of records supporting the financial assurance mechanism at any time.

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

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Director.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Director shall be the sole responsibility of the owner or operator.

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

**R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.**

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 53-7-106;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

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

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

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

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under

(2) meeting the following requirements:

(A) demonstrating compliance with Section R311-206-5, and

(B) notifying the Director in writing at least 30 days before the date of cessation of participation in the program, and specifying the date of cessation.

(i) The Director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under R311-206-5 for other USTs owned or operated by the owner or operator.

(ii) The date of cessation of participation in the program may occur after the date designated in Subsection R311-206-9(a)(2)(B) if the owner or operator does not document compliance with R311-206-5 by the date originally designated.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation of participation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

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

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

(1) notify the Director of the intent to participate in the program;

(2) comply with the requirements of Subsection 19-6-428(3), and

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

(b) In accordance with Subsection 19-6-428(3)(b), the Director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable, and

(iv) internal lining inspections, if applicable.

(3) The period of non-participation in the Program is less than six months, or the UST is less than ten years old.

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

**Date of Enactment or Last Substantive Amendment: September 14, 2012**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-428**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.**

**R311-207-1. Definitions.**

Definitions are found in Section R311-200.

**R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.**

(i) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

(ii) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and

(iii) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(2) The Statement of Qualification shall be updated annually in January, and shall be approved by the Director for a period of one year. The update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(c)(1)(B) and (C).

(d) The work plan shall include information about the claimant's contract with any proposed consultant or other person performing remedial action in accordance with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Director:

(1) The contract shall be with the consultant, and shall specify the certified UST consultant and other key personnel for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries, the insurance specified in R311-207-3(c)(1)(C).

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Director.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Director may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Director shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Director within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the claimant shall have 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement.

(i) The request for final reimbursement from the fund must be received by the Director within one year from the date of the "No Further Action" letter issued by the Director or reimbursement shall be denied. If a release is reopened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Director.

(j) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):

(1) the Director shall approve all work plans and associated budgets before the consultant initiates any work, and

(2) the contract shall comply with Subsections R311-207-3(d)(1), (3), (6), (7), and (8).

#### **R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Director. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Director.

**R311-207-5. Customary, Reasonable and Legitimate Expenses.**

(a) Costs claimed by the claimant in accordance with Section 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the Director. The Director may determine the amount of fund monies that will be reimbursed to a claimant for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of R311-207-7 or such other methods that are applicable to the item or task. As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate: performing abatement, investigation, site assessment, monitoring, or corrective action activities; providing alternative drinking water supplies; and settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(b) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.

(c) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES as revised November 14, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.

(d) If a claim that does not comply with the requirements of R311-207 is returned by the Director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(e) The Petroleum Storage Tank Trust Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the Director. The rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates in the rate schedule approved by the Director and the materials at cost to the consultant. Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the consultant reasonably should take under the circumstances, and for credits for proceeds the consultant received or should have received from salvage and material returned to suppliers. In no event shall the price paid by the Petroleum Storage Tank Trust Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source. The consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices or other documents acceptable to the Director. No reimbursement shall be made for undocumented labor hours and costs. No reimbursement shall be made for labor hours and costs associated with patenting or marketing.

**R311-207-6. Subrogation.**

When the State makes a payment from the Petroleum Storage Tank Trust Fund, the State shall have the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible. The claimant who receives payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

**R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules.**

(a) This rule incorporates by reference the Consultant Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund-reimbursable activities. Consultants must assign to one of the categories listed in the table, any service time for an individual that is billed to a claimant or directly to the PST Fund and for which reimbursement is claimed, unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories. By submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills and experience.

(b) A consultant may file with the Director, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The

(b) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release. The designation shall be made in writing to the Director.

(c) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):

(1) all work plans and budgets shall be pre-approved by the Director in accordance with Subsection R311-207-3(j);

(2) the consultant shall comply with Sections R311-207-4 and R311-207-5; and

(3) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(h) and (i).

**KEY: financial responsibility, petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: October 17, 2011**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409; 19-6-419**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-208. Underground Storage Tank Penalty Guidance.**

**R311-208-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-208-2. Underground Storage Tank Penalty Criteria.**

(a) This guidance provides criteria to the Director in implementing penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425 and any other Sections authorizing the Director to seek penalties.

(b) The procedures in Rule R311-208 are intended solely for the guidance of the Director and are not intended, and cannot be relied upon, to create a cause of action against the State.

(c) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

**R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.**

(a) The Director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Section 19-1-102(3):

(1) Payment of the penalty may be extended based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) Without regard to financial hardship, the Director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Director.

(3) In some cases, the Director may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the Director. The following criteria shall be used in determining the eligibility of such projects:

(A) The project must be in addition to all regulatory compliance obligations;

(B) The project preferably should closely address the environmental effects of the violation;

(C) The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(D) The project must primarily benefit the environment rather than benefit the violator;

(E) The project must be judicially enforceable;

(F) The project must not generate positive public perception for violations of the law.

**R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.**

(a) Where the Director determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than \$500 per occurrence. Factors that mitigate against a higher penalty are:

(1) A facility's certificate of compliance recently lapsed and product has been delivered.

(2) A facility is in compliance and replaces their tank and received one delivery of fuel without a certificate

**R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.**

**R311-209-1. Definitions.**

Definitions are found in Section R311-200.

**R311-209-2. Use of the State Cleanup Appropriation.**

The Director shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, as authorized by Sections 19-6-405.7, 19-6-409(5) and 19-6-424.5(9) respectively, when:

- (a) The release is from a regulated UST,
- (b) The owner or operator is not fully covered by the Petroleum Storage Tank Trust Fund,
- (c) The release is a direct or potential threat to human health or the environment, and
- (d) The owner or operator is unknown, unable, or unwilling to bring the site under control or remediate the site to achieve the clean-up goals as described in Section R311-211, or
- (e) Other relevant factors are evident as determined by the Director.

**R311-209-3. Criteria for Allocating Petroleum Storage Tank Cleanup Funds and the State Cleanup Appropriations.**

When determining priorities for authorizing action or expenditures from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, the Director shall give due emphasis to releases that present a threat to the public health or the environment on a case-by case basis using the following criteria:

- (a) The immediate or direct threat to public health or the environment,
- (b) The potential threat to public health or the environment,
- (c) The economic consideration and cost effectiveness of the action, and
- (d) The technology available, or
- (e) Other relevant factors as determined by the Director.

**KEY: petroleum, underground storage tanks\***

**Date of Enactment or Last Substantive Amendment: October 9, 1998**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-409**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-210. Administrative Procedures.**

**R311-210-1. Administrative Procedures.**

Administrative proceedings are governed by Rule R305-6.

**KEY: administrative proceedings, underground storage tanks, hearings, adjudicative proceedings**

**Date of Enactment or Last Substantive Amendment: August 29, 2011**

**Notice of Continuation: April 10, 2012**

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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites.**

**R311-211-1. Definitions.**

Definitions are found in Section R311-200.

**R311-211-2. Source Elimination.**

The initial step in all corrective actions implemented at UST and CERCLA sites is to take appropriate action to eliminate the source of contamination either through removal or appropriate source control.

Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively, and;

(2) No water wells or surface water are located within 500 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively.

(e) If any contaminants from a release are above the Initial Screening Levels, the Director shall require owners and operators to submit all relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(1) If all Tier 1 Screening Criteria have been met, the Director shall evaluate the site for No Further Action determination.

(2) If any of the Tier 1 Screening Criteria have not been met owners and operators shall proceed as described below.

(i) Owners and operators shall conduct a site investigation to provide complete information to the Director regarding the factors outlined in R311-211-5(c) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the Director site-specific cleanup standards based upon an analysis of the factors outlined in R311-211-5(c). Alternatively, the owners and operators may propose for the approval of the Director the Initial Screening Levels established in R311-211-6(a) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the Director prior to completing the site investigation. However, if corrective action is implemented in separate phases, the Director will not make a No Further Action determination until all factors outlined in R311-211-5(c) are evaluated.

(iv) Owners and operators may then propose and conduct corrective action approved by the Director to attempt to reach the approved site-specific cleanup standards. If the owners and operators demonstrate that the approved site-specific cleanup standards have been met and maintained based upon sampling at intervals and for a period of time approved by the Director, the Director shall evaluate the site for No Further Action determination.

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the Director may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in R311-211-5(c) for the Director's approval. The Director may also require further investigation to fully define the extent and degree of the contamination if the passage of time or other factors creates the possibility that existing data may no longer be reliable.

#### **R311-211-7. Significance Level.**

(a) Where contamination is identified that is below applicable MCLs, water classification standards, or air quality standards or where applicable standards do not exist for either the parameter in question or the environmental media in which the contamination is found, the cleanup standard shall be established using R311-211-3 and will be set between background and the observed level of contamination. Should it be determined that the observed level of contamination will be allowed to remain, this becomes the significance level.

(b) At any time, should continued monitoring identify contamination above the significance level, the criteria of R311-211-3 will be reapplied in connection with R311-211-4 to re-evaluate the need for corrective action and determine an appropriate cleanup standard.

**KEY: petroleum, underground storage tanks**

**Date of Enactment or Last Substantive Amendment: May 15, 2006**

**Notice of Continuation: April 10, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106; 19-6-403**

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-212. Administration of the Petroleum Storage Tank Loan Fund.**

**R311-212-1. Definitions.**

Definitions are found in Section R311-200.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-405.3(3) through (6), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

#### **R311-212-5. Loan Application Review.**

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Director may require payment of costs in advance. The Director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

- (1) review of any and all records and documents on file;
- (2) verification of any and all information provided by the applicant;
- (3) review of credit worthiness and security pledged; and
- (4) review of a site construction work plan.

(d) The applicant must close the loan within 30 days after the Director mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Director if the closing is delayed due to circumstances beyond the applicant's control.

#### **R311-212-6. Security for Loans.**

(a) When an applicant applies for a loan of greater than \$30,000, the loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

- (1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or
- (2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

- (1) a current written appraisal, performed by a State of Utah certified appraiser;
- (2) a current county tax assessment notice, or
- (3) other documentation acceptable to the Director.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Director by a title company or appropriate professional person approved by the Director.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

lapses or is revoked. Lapsing under section R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

- (b) The Director may declare the full amount of the defaulted loan, penalty, and interest immediately due.
- (c) The Director need not give notice of default prior to declaring the full amount due and payable.
- (d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

**R311-212-10. Forms.**

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Director for making loans.

- (1) Loan Application version 06/21/11
- (2) Balance Sheet version 04/02/04
- (3) Loan Commitment Agreement version 06/15/95
- (4) Corporate Authorization version 06/15/95
- (5) Promissory Note version 06/15/95
- (6) Extension and Modification Agreement version 06/15/95
- (7) Security Agreement version 06/15/95
- (8) Hypothecation Agreement 06/15/95
- (9) General Pledge Agreement 06/15/95
- (10) Assignment 06/15/95
- (11) Assignment of Account 06/15/95
- (12) Trust Deed
  - (i) property with underground storage tanks version 06/15/95; or
  - (ii) property without underground storage tanks version 06/15/95.

(b) The Director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

**R311-212-11. Rules in Effect.**

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

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

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