TITLE 19
ENVIRONMENTAL QUALITY CODE
[Current through 2002 Fourth Special Session]

CHAPTER 1
GENERAL PROVISIONS

Part 1
Organization.

Part 2
Powers.

Part 3
Administration.

19-1-101 Short Title.
The title is known as the "Environmental Quality Code."

19-1-102 Purposes.
The purpose of this title is to:
(1) clarify the powers and duties of the Department of Environmental Quality in relationship to local health departments;
(2) provide effective, coordinated management of state environmental concerns;
(3) safeguard public health and quality of life by protecting and improving environmental quality while considering the benefits to public health, the impacts on economic development, property, wildlife, tourism, business, agriculture, forests, and other interests, and the costs to the public and to industry; and
(4)(a) strengthen local health departments' environmental programs;
(b) build consensus among the public, industry, and local governments in developing environmental protection goals; and
(c) appropriately balance the need for environmental protection with the need for economic and industrial development.

19-1-103 Definitions.
As used in this title:
(1) "Department" means the Department of Environmental Quality.
(2) "Executive director" means the executive director of the department appointed pursuant to Section 19-1-104.
(3) "Local health department" means a local health department as defined in Title 26A, Chapter 1,

Part 1.

(4) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

19-1-104 Creation of department -- Appointment of executive director.

(1) There is created within state government the Department of Environmental Quality. The department shall be administered by an executive director.

(2) The executive director shall be appointed by the governor with the consent of the Senate and shall serve at the pleasure of the governor.

(3) The executive director shall have demonstrated the necessary administrative and professional ability through education and experience to efficiently and effectively manage the department's affairs.

(4) The Legislature shall fix the compensation of the executive director in accordance with Title 67, Chapter 22, State Officer Compensation.

Amended by ch 176, § 20, 2002 General Session (S B. 10)

19-1-105 Divisions of department --Control by division directors.

(1) The following divisions are created within the department:

(a) the Division of Air Quality, to administer Title 19, Chapter 2;

(b) the Division of Drinking Water, to administer Title 19, Chapter 4;

(c) the Division of Environmental Response and Remediation, to administer Title 19, Chapter 6, Parts 3 and 4;

(d) the Division of Radiation, to administer Title 19, Chapter 3;

(e) the Division of Solid and Hazardous Waste, to administer Title 19, Chapter 6, Parts 1, 2, and 5; and

(f) the Division of Water Quality, to administer Title 19, Chapter 5.

(2) Each division is under the immediate direction and control of a division director appointed by the executive director.

(3) Each division director shall possess the necessary administrative skills and training to adequately qualify him for his position. He shall have graduated from an accredited college or university with:

(a) a four-year degree in physical or biological science or engineering;

(b) a related degree; or

(c) a degree in law.

(4) Each director may be removed at the will of the executive director.

19-1-106 Boards within department.

(1) The following policymaking boards are created within the department:

(a) the Air Quality Board, appointed under Section 19-2-103;

(b) the Radiation Control Board, appointed under Section 19-3-103;

(c) the Drinking Water Board, appointed under Section 19-4-103;

(d) the Water Quality Board, appointed under Section 19-5-103; and

(e) the Solid and Hazardous Waste Control Board, appointed under Section 19-6-103.

(2) The authority of the boards created in Subsection (1) is limited to the specific authority granted them under this title

Decisions

Hearings

The authority of the Utah Drinking Water Board is limited to the specific authority granted it under Title 19, which does not specifically authorize the Board to hold adjudicative hearings Department of Envtl Quality v Golden Gardens Water Co, 2001 UT App. 173, 27 P.3d 579 (decided before 2002 amendments authorized hearings under Section 19-4-104(b) and (c)).

19-1-107. Environmental Quality Coordinating Committee created -- Chair -- Function -- Meetings -- Per diem and expenses.

Repealed. by ch. 105, § 1, 2002 General Session (H. B. 15).

19-1-108 Creation of environmental quality restricted account -- Purpose of restricted account -- Sources of funds -- Uses of funds.

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of monies for the restricted account are:

(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5);

(b) hazardous waste disposal fees collected under Section 19-6-118;

(c) PCB waste disposal fees collected under Section 19-6-118.5;

(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

(e) all investment income derived from money in the restricted account created in this section.

(3) In each fiscal year, the first $500,000 collected from all waste disposal fees listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the restricted account created in this section.

(4) The Legislature may annually appropriate monies from the Environmental Quality Restricted Account to:
(a) the department for the costs of administering radiation control programs;
(b) the department for the costs of administering solid and hazardous waste programs; and
(c) the Hazardous Substances Mitigation Fund, up to $400,000, for purposes set forth in Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act.

(5) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues reserve in the restricted account sufficient monies to meet departmental needs in years of projected shortages.

(6) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(7) The Legislature may annually appropriate not more than $200,000 from this account to the Department of Public Safety, created in Section 53-1-103, to be used by that department solely for hazardous materials:
(a) management training; and
(b) response preparation and emergency response training.

(8) All funds appropriated under this part that are not expended at the end of the fiscal year lapse into the account created in Subsection (1).

(9) For fiscal year 1998-99, up to $537,000 in the Environmental Quality Restricted Account may be appropriated by the Legislature to fund legislative priorities.

Amended by ch. 417, § 1, 1998 General Session
Amended by ch. 314, § 1, 2001 General Session (H.B. 370)
Amended by ch. 297, § 1, 2002 General Session (S.B. 96)

POWERS

19-1-201 Powers of department.

(1) The department shall:
(a) enter into cooperative agreements with the Department of Health to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;
(b) consult with the Department of Health and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups; and
(c) coordinate implementation of environmental programs to maximize efficient use of resources by developing, with local health departments, a Comprehensive Environmental Service Delivery Plan that:
(i) recognizes that the department and local health departments are the foundation for providing environmental health programs in the state;
(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;
(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and
(iv) is reviewed and updated annually.

(2) The department may:
(a) investigate matters affecting the environment;
(b) investigate and control matters affecting the public health when caused by environmental hazards;
(c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;
(d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;
(e) use local health departments in the delivery of environmental health programs to the extent provided by law;
(f) enter into contracts with local health departments or others to meet responsibilities

established under this title;

(g) acquire real and personal property by purchase, gift, devise, and other lawful means,

(h) prepare and submit to the governor a proposed budget to be included in the budget submitted by the governor to the Legislature;

(i)(i) establish a schedule of fees that may be assessed for actions and services of the department according to the procedures and requirements of Section 63-38-3.2; and

(ii) in accordance with Section 63-38-3.2, all fees shall be reasonable, fair, and reflect the cost of services provided;

(j) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;

(k) perform the administrative functions of the boards established by Section 19-1-106, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the board's functions; and

(l) upon the request of any board or the executive secretary, provide professional, technical, and clerical staff and field and laboratory services, the extent of which are limited by the funds available to the department for the staff and services.

19-1-202 Duties and powers of the executive director.

(1) The executive director shall:

(a) administer and supervise the department;

(b) coordinate policies and program activities conducted through boards, divisions, and offices of the department;

(c) approve the proposed budget of each board, division, and office within the department;

(d) approve all applications for federal grants or assistance in support of any department program; and

(e) with the governor's specific, prior approval, expend funds appropriated by the Legislature necessary for participation by the state in any fund, property, or service provided by the federal government.

(2) The executive director may:

(a) issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a board created under Section 19-1-106, unless the executive director finds that a condition exists which creates a clear and present hazard to the public health or the environment and which requires immediate action, and if the enforcement power is vested with a board created under Section 19-1-106, the executive director may with the concurrence of the governor order any person causing or contributing to the condition to reduce, mitigate, or eliminate the condition;

(b) with the approval of the governor, participate in the distribution, disbursement, or administration of any fund or service, advanced, offered, or contributed by the federal government for purposes consistent with the powers and duties of the department;

(c) accept and receive funds and gifts available from private and public groups for the purposes of promoting and protecting the public health and the environment and expend the funds as appropriated by the Legislature;

(d) make policies not inconsistent with law for the internal administration and government of the department, the conduct of its employees, and the custody, use, and preservation of the records, papers, books, documents, and property of the department;

(e) create advisory committees as necessary to assist in carrying out the provisions of this title;

(f) appoint division directors who may be removed at the will of the executive director and who shall be compensated in an amount fixed by the executive director;

(g) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, affected groups, political subdivisions, and industries in carrying out the purposes of this title;

(h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act, employ employees necessary to meet the requirements of this title;

(i) authorize any employee or representative of the division to conduct inspections as permitted in this title;

(j) encourage, participate in, or conduct any studies, investigations, research, and demonstrations relating to hazardous materials or substances releases necessary to meet the requirements of this title;

(k) collect and disseminate information about hazardous materials or substances releases; and

(l) review plans, specifications, or other data relating to hazardous substances releases as provided in this title.

19-1-203 Representatives of department authorized to enter regulated premises

(1) Authorized representatives of the department, upon presentation of appropriate credentials, may enter at reasonable times upon the premises of properties regulated under this title to perform inspections to insure compliance with rules made by the department

(2) The inspection authority provided in this section does not apply to chapters in this title which provide for specific inspection procedures and authority.

19-1-204 Legal advice and representation for department.

(1) The attorney general is the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them.

(2) The attorney general or the county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil or criminal action requested by the executive director or any board created in Section 19-1-106 to abate a condition which exists in violation of, or to prosecute for the violation of or for the enforcement of, the laws or standards, orders, and rules of the department.

19-1-205 Assumption of responsibilities.

The department assumes all the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Division of Environmental Health, the Air Conservation Committee, the Solid and Hazardous Waste Committee, the Utah Safe Drinking Water Committee, and the Water Pollution Control Committee previously vested in the Department of Health and its executive director:

(1) including programs for individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies; but

(2) excluding all other sanitation programs, which shall be administered by the Department of Health

PART 3
ADMINISTRATION

19-1-301 Adjudicative proceedings.

The department and its boards shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

19-1-302 Violation of laws and orders unlawful

It is unlawful for any person:

(1) to violate the provisions of the laws of this title or the terms of any order or rule issued under it; or

(2) to fail to remove or abate from private property under the person's control at his own expense within 48 hours, or such other reasonable time as the department determines, after being ordered to do so, any nuisance, source of filth, or other sanitation violation.

19-1-303 Criminal and civil penalties -- Liability for violations.

(1)(a) Any person who violates any provision of this title or lawful orders or rules adopted under this title by the department shall:

(i) in a civil proceeding be assessed a penalty not to exceed the sum of $5,000; or

(ii) in a criminal proceeding:

(A) for the first violation, be guilty of a class B misdemeanor; and

(B) for a subsequent similar violation within two years, be guilty of a class A misdemeanor.

(b) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.

(2) Assessment or conviction under this title does not relieve the person assessed or convicted from civil liability for any act which was also a violation of the public health laws.

(3) Each day of violation of this title or rules made by the department under it may be considered a separate violation

(4) The enforcement procedures and penalties provided in Subsections (1) through (3) do not apply to chapters in this title which provide for other specific enforcement procedures and penalties.

(5) Unless otherwise specified in statute, the department shall deposit all civil penalties and fines imposed and collected under this title into the General Fund.

19-1-304 Principal and branch offices of department.

(1) The principal office of the department shall be in Salt Lake County.

(2) The department may establish branch offices at other places in the state to furnish comprehensive and effective environmental programs and to coordinate with and assist local health officers.

19-1-305 Administrative enforcement proceedings - Tolling of limitation period.
The issuance of an administrative enforcement notice of a violation or an order under Section 19-1-202, 19-2-110, 19-4-107, 19-6-404, 19-5-111, or 19-6-112, or issuance of a notice of agency action under Section 19-3-109 or 19-6-407 tolls the running of the period of limitation for commencement of a civil action brought to assess or collect a penalty until the date the notice of violation, order, or agency action becomes final under Title 63, Chapter 46b, Administrative Procedures Act, or for a period of three years, whichever occurs first.

19-1-306 Records of the department.
(1) Except as provided in this section, records of the department shall be subject to Title 63, Chapter 2, Government Records Access and Management Act.
(2)(a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections 63-2-304(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section 63-2-308, to the extent those records relate to a program:
(i) that is delegated, authorized, or for which primacy has been granted to the state,
(ii) for which the state is seeking delegation, authorization, or primacy; or
(iii) under the federal Comprehensive Environmental Response, Compensation, and Liability Act.
(b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992, shall also apply to the records described in Subsection (1).
(3)(a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation and Liability Act.
(b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.
(4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections 63-2-304(1) and (2).
(5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this subsection.

CHAPTER 3
RADIATION CONTROL ACT

Part 1
General Provisions.

Part 2
Interstate Compact on Low-level Radioactive Waste.

Part 3
Placement of High Level Nuclear Waste.

PART 1
GENERAL PROVISIONS

19-3-101 Short title.
This chapter is known as the "Radiation Control Act."

19-3-102 Definitions.
As used in this chapter:
(1) "Board" means the Radiation Control Board created under Section 19-1-106.
(2)(a) "Broker" means a person who performs one or more of the following functions for a generator:
(i) arranges for transportation of the radioactive waste;
(ii) collects or consolidates shipments of radioactive waste; or
(iii) processes radioactive waste in some manner.
(b) "Broker" does not include a carrier whose sole function is to transport the radioactive waste.
(3) "By-product material" has the same meaning as in 42 U.S.C. Sec. 2014(e)(2).
(4) "Class B and class C low-level radioactive waste" has the same meaning as in 10 CFR 61.55.
(5) Executive secretary" means the executive secretary of the board.
(6) "Generator" means a person who:
(a) possesses any material or component:
(i) that contains radioactivity or is radioactively contaminated; and
(ii) for which the person foresees no further use; and
(b) transfers the material or component to:
(i) a commercial radioactive waste treatment or disposal facility; or
(ii) a broker.
(7)(a) "High-level nuclear waste" means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.
(a) "High-level nuclear waste" does not include medical or institutional wastes, naturally-occurring radioactive materials, or uranium mill tailings.
(8)(a) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.
(b) low level radioactive waste" does not include waste containing more than 100 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.
(9) "Radiation" means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.
(10) "Radioactive" means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei.

Amended by ch. 314, § 2, 2001 General Session (H.B. 370)

19-3-103 Radiation Control Board – Members – Organization – Meetings – Per diem and expenses.

(1) The board created under Section 19-1-106 comprises 13 members, one of whom shall be the executive director, or his designee, and the remainder of whom shall be appointed by the governor with the consent of the Senate.
(2) No more than six appointed members shall be from the same political party.
(3) The appointed members shall be knowledgeable about radiation protection and shall be as follows:
(a) one physician;
(b) one dentist;
(c) one health physicist or other professional employed in the field of radiation safety;
(d) three representatives of regulated industry, at least one of whom represents the radioactive

waste management industry, and at least one of whom represents the uranium milling industry;

(e) one registrant or licensee representative from academia;

(f) one representative of a local health department;

(g) one elected county official; and

(h) three members of the general public, at least one of whom represents organized environmental interests.

(4)(a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(5) Each board member is eligible for reappointment to more than one term.

(6) Each board member shall continue in office until the expiration of his term and until a successor is appointed, but not more than 90 days after the expiration of his term.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, after considering recommendations by the department and with the consent of the Senate.

(8) The board shall annually elect a chair and vice chair from its members.

(9) The board shall meet at least quarterly. Other meetings may be called by the chair, by the executive secretary, or upon the request of three members of the board.

(10) Reasonable notice shall be given each member of the board prior to any meeting.

(11) Seven members constitute a quorum. The action of a majority of the members present is the action of the board.

(12)(a)(i) Members who are not government employees receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b)(i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c)(i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

Amended by ch 297, §2, 2002 General Sessions (S B. 96).
Amended by ch.176, § 22, 2002 General Session (S. B. 10).

19-3-103.5 Board authority and duties.

(1) The board may:

(a) require submittal of specifications or other information relating to licensing applications for radioactive materials or registration of radiation sources for review, approval, disapproval, or termination;

(b) issue orders necessary to enforce the provisions of this part, enforce the orders by appropriate administrative and judicial proceedings, and institute judicial proceedings to secure compliance with this part;

(c) hold hearings and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or appoint hearing officers and authorize them to exercise the powers under this subsection;

(d) settle or compromise any administrative or civil action initiated to compel compliance with this part or any rules adopted under this part;

(e) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the provisions of this part;

(f) promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources;

(g) cooperate with any persons in studies, research, or demonstration projects regarding radioactive waste management or control of radiation sources;
(h) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part;
(i) exercise all incidental powers necessary to carry out the purposes of this part;
(j) submit an application to the U.S. Food and Drug Administration for approval as an accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992;
(k) accredit mammography facilities, pursuant to approval as an accrediting body from the U.S Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992; and
(l) review the qualifications of and issue certificates of approval to individuals who survey mammography equipment and oversee quality assurance practices at mammography facilities.

(2) The board shall:
(a) hear appeals of final decisions made by the executive secretary or appoint a hearing officer to hear the appeal and make recommendations to the board;
(b) prepare a radioactive waste management plan in compliance with Section 19-3-107 as soon as practicable; and
(c) impound radioactive material as authorized in Section 19-3-111.

(3) Representatives of the board upon presentation of appropriate credentials may enter at reasonable times upon the premises of public and private properties subject to regulation under this part to perform inspections to insure compliance with this part and rules made by the board.

19-3-104 Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.

(1) As used in this section:
(a) "Decommissioning" includes financial assurance.
(b) "Source material" and "byproduct material" have the same definition as in 42 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

(2) The board may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) The board may make rules:
(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;
(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;
(c) to establish:
(i) board accreditation requirements and procedures for mammography facilities; and
(ii) certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and
(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:
(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and
(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5)(a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).
(b) On and after January 1, 2003 through March 30, 2003:
(i) $6, 667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and
(ii) $4,167 per month for those uranium mills the executive secretary has determined are on standby status.
(c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.
(d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not

required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63-38-3 2, subject to the restrictions under Subsection (5)(d).

(f) The department shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(6)(a) The department shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The department shall comply with the requirements of Section 63-38-3.2 in assessing fees for licensure and registration.

(7) The department shall coordinate its activities with the Department of Health rules made under Section 26-21a-203.

(8)(a) Except as provided in Subsection (9), the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(9)(a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (8) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(10)(a) The board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection (10) are not considered employees or representatives of the division or the state when conducting the inspections.

(11)(a) The board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities.

(b) Any facility under Subsection (11)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) A facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(12) The board shall by rule establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities, taking into account existing financial assurance requirements.

Amended by ch 311, § 1, 2001 General Session *(H B. 356)*
Amended by ch 297, § 3, 2002 General Session (S B 96).

19-3-105 Legislative and gubernatorial approval required.

(1)(a) A person may not own, construct, modify, or operate any facility for the purpose of commercially transferring, storing, decaying in storage, treating, or disposing of radioactive waste without first submitting and receiving the approval of the board for a radioactive material license for the facility.

(b) A person may not construct a new commercial radioactive waste transfer, storage, decay in storage, treatment, or disposal facility until:

(i) the requirements of Section 19-3-104 have been met;

(ii) in addition and subsequent to the approval required in Subsection (a), the governor and the Legislature have approved the facility; and

(iii) local planning and zoning has authorized the facility.

(c) For purposes of this section, the following items shall be treated as submission of a new license application:

(i) the submission of a revised application specifying a different geographic site than a previously submitted application;

(ii) an application for amendment of a commercial radioactive waste license for transfer, storage, decay in storage, treatment, or disposal facilities, including incinerators, if the

construction would cost 50% or more of the cost of construction of the original transfer, storage, decay in storage, treatment, or disposal facility or the modification would result in an increase in capacity or throughput of a cumulative total of 50% of the total capacity or throughput which was approved in the facility license as of January 1, 1990, or the initial approval facility license if the initial license approval is subsequent to January 1, 1990; or

(iii) any request for approval for a commercial radioactive waste transfer, storage, decay in storage, treatment, or disposal facility to receive class B or class C low-level radioactive waste, including the submission of a new license application, revised license application, or major license amendment.

(2) A person need not obtain gubernatorial or legislative approval for the construction of a radioactive waste facility for which a license application has been approved by the Department of Health or submitted to the federal Nuclear Regulatory Commission and to the Department of Health for approval before January 1, 1990, and which has been determined, on or before October 31, 1990, by the Department of Health to be complete in accordance with state and federal requirements

(3) The board shall suspend acceptance of further applications for commercial radioactive waste facilities upon a finding that they cannot adequately oversee existing and additional radioactive waste facilities for license compliance, monitoring, and enforcement. The board shall report the suspension to the Legislative Management Committee

(4) The board shall review each proposed radioactive waste license application to determine whether the application complies with the provisions of this chapter and the rules of the board.

(5)(a) If the radioactive license application is determined to be complete, the board shall issue a notice of completeness.

(b) If the plan is determined by the board to be incomplete, the board shall issue a notice of deficiency, listing the additional information to be provided by the applicant to complete the application.

19-3-106 Fee for commercial radioactive waste disposal or treatment.

(1)(a) An owner or operator of a commercial radioactive waste treatment or disposal facility that receives radioactive waste shall collect a fee from the generator of the waste as provided in Subsection (1)(b).

(b)(i) On and after July 1, 1994 through June 30, 2001, the fee is $2.50 per ton, or fraction of a ton, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

(ii) On and after July 1, 2001, the fee is equal to the sum of the following amounts:

(A) 10 cents per cubic foot, or fraction of a cubic foot, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment; and

(B) $1 per curie, or fraction of a curie, of radioactive waste, other than byproduct material, received at the facility for disposal or treatment.

(2)(a) The owner or operator shall remit the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(b) The department shall deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(c) The owner or operator shall submit to the department with the payment of the fee under this subsection a completed form as prescribed by the department that provides information the department requires to verify the amount of waste received and the fee amount for which the owner or operator is liable.

(3) The Legislature shall appropriate to the department funds to cover the cost of radioactive waste disposal supervision.

Amended by ch 314, § 3, 2001 General Session (H.B. 370).

19-3-106.2. Fee for perpetual care and maintenance of commercial radioactive waste disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Fund created --Contents -- Use of fund monies.

(1) As used in this section, "perpetual care and maintenance" means perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, as required by applicable laws, rules, and license requirements beginning 100 years after the date of final closure of the facility.

(2)(a) On and after July 1, 2002, the owner or operator of an active commercial radioactive waste treatment or disposal facility shall pay an annual fee of $400,000 to provide for the perpetual care and maintenance of the facility.

(b) The owner or operator shall remit the fee to the department on or before July 1.

(3) The department shall deposit fees received under Subsection (2) into the Radioactive Waste Perpetual Care and Maintenance Fund created in Subsection (4).

(4)(a) There is created the Radioactive Waste Perpetual Care and Maintenance Fund to finance perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites within those facilities used for the disposal of byproduct material.

(b) The sources of revenue for the fund are:
(i) the fee imposed under this section; and
(ii) investment income derived from money in the fund.

(c)(i) The revenues for the fund shall be segregated into subaccounts for each commercial radioactive waste treatment or disposal facility covered by the fund.

(ii) Each subaccount shall contain:
(A) the fees paid by each owner or operator of a commercial radioactive waste treatment or disposal facility; and
(B) the associated investment income.

(5) The Legislature may appropriate money from the Radioactive Waste Perpetual Care and Maintenance Fund for:
(a) perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, beginning 100 years after the date of final closure of the facility; or
(b) maintenance or monitoring of, or implementing corrective action at, a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, before the end of 100 years after the date of final closure of the facility, if:
(i) the owner or operator is unwilling or unable to carry out postclosure maintenance, monitoring, or corrective action; and
(ii) the financial surety arrangements made by the owner or operator, including any required under applicable law, are insufficient to cover the costs of postclosure maintenance, monitoring, or corrective action.

(6) The money appropriated from the Radioactive Waste Perpetual Care and Maintenance Fund for the purposes specified in Subsection (5)(a) or (5)(b) at a particular commercial radioactive waste treatment or disposal facility may be appropriated only from the subaccount established under Subsection (4)(c) for the facility.

(7) The attorney general shall bring legal action against the owner or operator or take other steps to secure the recovery or reimbursement of the costs of maintenance, monitoring, or corrective action, including legal costs, incurred pursuant to Subsection (5)(b).

(8)(a) The board shall direct an evaluation of the adequacy of the Radioactive Waste Perpetual Care and Maintenance Fund every five years, beginning in 2006. The evaluation shall determine whether the fund is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities.

(b) The board shall submit a report on the evaluation to the Legislative Management Committee on or before October 1 of the year in which the report is due.

(9) This section does not apply to a uranium mill licensed under 10 C F.R. Part 40, Domestic Licensing of Source Material.

Enacted by ch 314, § 4, 2001 General Session (H B. 370).

19-3-106.4. Generator site access permits.

(1) A generator or broker may not transfer radioactive waste to a commercial radioactive waste treatment or disposal facility in the state without first obtaining a generator site access permit from the executive secretary.

(2) The board may make rules pursuant to Section 19-3-104 governing a generator site access permit program.

(3)(a) Except as provided in Subsection (3)(b), the department shall establish fees for generator site access permits in accordance with Section 63-38-3.2.

(b) On and after July 1, 2001 through June 30, 2002, the fees are:
(i) $1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per year;
(ii) $500 for generators transferring less than 1,000 cubic feet of radioactive waste per year; and
(iii) $5,000 for brokers.

(c) The department shall deposit fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108.

(4) This section does not apply to a generator or broker

transferring radioactive waste to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Enacted by ch 314, § 5, 2001 General Session (H B 370)

19-3-107 State radioactive waste plan.

(1) The board shall prepare a state plan for management of radioactive waste by July 1, 1993.

(2) The plan shall:

(a) provide an estimate of radioactive waste capacity needed in the state for the next 20 years;

(b) assess the state's ability to minimize waste and recycle;

(c) evaluate radioactive waste treatment and disposal options, as well as radioactive waste needs and existing capacity;

(d) evaluate facility siting, design, and operation;

(e) review funding alternatives for radioactive waste management; and

(f) address other radioactive waste management concerns that the board finds appropriate for the preservation of the public health and the environment.

19-3-108 Powers and duties of executive secretary.

(1) The executive director shall appoint an executive secretary, with the approval of the board, to serve under the direction of the executive director.

(2) The executive secretary may:

(a) develop programs to promote and protect the public from radiation sources in the state,

(b) advise, consult, and cooperate with other agencies, states, the federal government, political subdivisions, industries, and other groups to further the purposes of this chapter,

(c) as authorized by the board:

(i) issue licenses, registrations, and certifications;

(ii) review and approve plans;

(iii) enforce rules through the issuance of orders and assess penalties in accordance with Section 19-3-109;

(iv) impound radioactive material under Section 19-3-111; and

(v) authorize employees or representatives of the department to enter at reasonable times and upon reasonable notice in and upon public or private property for the purpose of inspecting and investigating conditions and records concerning radiation sources.

19-3-109 Civil penalties -- Appeals.

(1) A person who violates any provision of Sections 19-3-104 through 19-3-113, any rule or order issued under the authority of those sections, or the terms of a license, permit, or registration certificate issued under the authority of those sections is subject to a civil penalty not to exceed $5,000 for each violation.

(2) The board may assess and make a demand for payment of a penalty under this section and may compromise or remit that penalty.

(3) In order to make demand for payment of a penalty assessed under this section, the board shall issue a notice of agency action, specifying, in addition to the requirements for notices of agency action contained in Title 63, Chapter 46b, Administrative Procedures Act:

(a) the date, facts, and nature of each act or omission charged;

(b) the provision of the statute, rule, order, license, permit, or registration certificate that is alleged to have been violated,

(c) each penalty that the bureau proposes to impose, together with the amount and date of effect of that penalty; and

(d) that failure to pay the penalty or respond may result in a civil action for collection.

(4) A person notified according to Subsection (3) may request an adjudicative proceeding.

(5) Upon request by the board, the attorney general may institute a civil action to collect a penalty imposed under this section.

(6)(a) Except as provided in Subsection (b), the department shall deposit all monies collected from civil penalties imposed under this section into the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

19-3-110 Criminal penalties.

(1) Any person who knowingly violates any provision of Sections 19-3-104 through 19-3-113 or lawful orders or rules adopted by the department under those sections shall in a criminal proceeding:

(a) for the first violation, be guilty of a class B misdemeanor; and

(b) for a subsequent similar violation within two years, be guilty of a third degree felony.

(2) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.
(3) Conviction under Sections 19-3-104 through 19-3-113 does not relieve the person convicted from civil liability for any act which was also a violation of the public health laws

Amended by ch. 271, § 2, 1998 General Session

19-3-111 Impounding of radioactive material.
(1) The board may impound the radioactive material of any person if:
  (a) the material poses an imminent threat or danger to the public health or safety; or
  (b) that person is violating:
    (i) any provision of Sections 19-3-104 through 19-3-113;
    (ii) any rules or orders enacted or issued under the authority of those sections; or
    (iii) the terms of a license, permit, or registration certificate issued under the authority of those sections.
(2) Before any dispositive action may be taken with regard to impounded radioactive materials, the board shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

19-3-112 Notification by the department to certain persons of release of radiation from Nevada Test Site -- Notification to certain news outlets.
(1) When informed by the United States Department of Energy of any release of radiation exceeding the Nuclear Regulatory Commission's limits for unrestricted use in air or water from the Nevada Test Site which is detected outside its boundaries, the department shall, unless prohibited by federal law, immediately convey to the persons specified in Subsection (2) all information that is made available to it, including:
  (a) the date;
  (b) the time and duration of each release of radiation;
  (c) estimates of total amounts of radiation released;
  (d) the types and amounts of each isotope detected off-site;
  (e) the locations of monitoring stations detecting off-site radiation; and
  (f) current and projected wind direction, wind velocity, and precipitation for the region.
(2) Unless prohibited by federal law, the department shall provide the information required under Subsection (1) to the following:
  (a) members of the Utah congressional delegation or their designated representatives;
  (b) the director of the Division of Emergency Services and Homeland Security;
  (c) the attorney general;
  (d) the regional director of the Federal Emergency Management Agency;
  (e) the regional director of the National Oceanic and Atmospheric Administration;
  (f) the executive director of the Utah League of Cities and Towns;
  (g) the executive director of the Department of Health; and
  (h) the chairpersons of the county commissions of affected counties.
(3) If the state is informed by the United States Department of Energy that any radiation released from the Nevada Test Site has been detected by the United States Department of Energy or United States Environmental Protection Agency or the department within the boundaries of the state of Utah, the department shall, unless prohibited by federal law, immediately provide all information available to it as specified in Subsection (1) to the Associated Press and United Press International outlets in the state.

Amended by ch. 14, § 1, 2002 General Session (H B. 40).

19-3-113 Federal-state agreement regarding radiation control.
(1) The governor, on behalf of the state, may enter into agreements with the federal government providing for discontinuation of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by the state, pursuant to Section 19-3-104.
(2) Any person who, on the effective date of an agreement under Subsection (1), possesses a license issued by the federal government is considered to possess a federal license pursuant to a license issued by the department which shall expire either 90 days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the federal license, whichever is earlier.

Decisions

Ruling on revocation of depleted uranium general license. Wrangler Laboratories, Larsen Laboratories, Orion Chemical Company and John P. Larsen, ALAB-951, 33 NRC 505 (1991).

PART 2
INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE

19-3-201 Interstate Compact on Low-level Radioactive Waste -- Policy and purpose of compact.

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of the wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

19-3-201.1. Definitions.

As used in this compact:

(1) "Facility" means any site, location, structure, or property used or to be used for the storage, treatment, or disposal of low-level waste, excluding federal waste facilities.

(2) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(3) "Host state" means a state in which a facility is located.

(4)(a) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release.

(b) "Low-level waste" does not include waste containing more than ten nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

Enacted by ch. 314 § 6, 2001 General Session (H.B. 370)

19-3-202 Practices of party states regarding low-level waste shipments -- Fees for inspections.

(1) Each party state agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state including:

(a) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(b) periodic unannounced inspection of the premises of the generators and the waste management activities on the premises;

(c) authorization of the containers in which the waste may be shipped, and a requirement that generators use only the type of containers authorized by the state;

(d) assurance that inspections of the carriers which transport the waste are conducted by proper authorities, and appropriate enforcement action taken for violations; and

(e) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that the violations do not recur including the inspection of every individual low-level waste shipment by that generator.

(2) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this compact.

(3) Nothing in this section limits any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this section.

19-3-203 Acceptance of low-level waste by facilities in party states -- Requirements for acceptance of waste generated outside region of party states -- Cooperation in determining site of facility required within region of party states -- Allowance of access to low-level waste and hazardous chemical waste disposal facilities by certain party states -- Establishment of fees and requirements by host states.

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of that party state's own low-level waste, shall accept low-level waste generated in any party state if the

waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Section 19-3-204.

(3) Until Subsection (2) takes effect, facilities located in any party state may accept low-level waste generated outside of any of the party states only if the waste is accompanied by a certificate of compliance issued by an official of the state in which the waste shipment originated. The certificate shall be in the form required by the host state, and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his or her agent or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations;

(d) additional requirements imposed by the host state; and

(e) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of the waste during shipment or after the waste reaches the facility.

(4)(a) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that may be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any party state as the host of the facilities on a permanent basis.

(b) Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5)(a) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to the facilities by generators within other party states.

(b) Nothing in this compact prevents any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of the facilities, so long as the action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility, to assure that closure, perpetual care, maintenance, and contingency requirements are met including adequate bonding.

19-3-204 Governor to designate state official to administer compact -- Designated officials comprise northwest low-level waste compact committee -- Meetings of committee -- Duties relating to existing regulations -- Authority to make arrangements with entities outside region of party states.

(1) The governor of each party state shall designate one state official as the person responsible for administration of this compact. The officials so designated shall together comprise the northwest low-level waste compact committee.

(2) The committee shall meet as required to consider matters arising under this compact.

(3) The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in the regulations.

(4) Notwithstanding any provision of Section 19-3-203 to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprised of the party states for access to facilities on terms and conditions the committee considers appropriate. However, a two-thirds vote of all members is required, including the affirmative vote of the member of any party state in which a facility affected by the arrangement is located, for the committee to enter into an arrangement

19-3-205 Eligible party states -- Requirements regarding joinder and withdrawal from compact -- Consent of Congress.

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact becomes effective upon enactment into law by that

party, but it is not initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval

(2) After the compact has initially taken effect under Subsection (1), any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Section 19-3-203 takes effect on July 1, 1983, if consent is given by Congress As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

Decisions

Ruling in uranium mill proceedings on alternate feed material license amendment ("Ashland 2" source material). International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), LBP-99-5, 49 N.R.C. 107 (1999)

Ruling in uranium mill proceedings on alternate feed material license amendment (Teledyne Wah Chang zirconium ore processing wastes) UMETCO Minerals Corporation (Source Materials License No SUA-1358), LBP-93-7, 37 NRC 267 (1993)

PART 3
PLACEMENT OF HIGH LEVEL NUCLEAR WASTE

19-3-301 Restrictions on nuclear waste placement in state.

(1) The placement, including transfer, storage, decay in storage, treatment, or disposal, within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste is prohibited.

(2) Notwithstanding Subsection (1) the governor, after consultation with the county executive and county legislative body of the affected county and with concurrence of the Legislature, may specifically approve the placement as provided in this part, but only if.

(a)(i) the federal Nuclear Regulatory Commission issues a license, pursuant to the Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A. 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear waste or greater than class C radioactive waste; and

(ii) the authority of the federal Nuclear Regulatory Commission to grant a license under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent jurisdiction; or

(b) an agency of the federal government is transporting the waste, and all state and federal requirements to proceed with the transportation have been met.

(3) The requirement for the approval of a final court of competent jurisdiction shall be met in all of the following categories, in order for a state license proceeding regarding waste to begin:

(a) transfer or transportation, by rail, truck, or other mechanisms;

(b) storage, including any temporary storage at a site away from the generating reactor;

(c) decay in storage;

(d) treatment; and

(e) disposal.

(4)(a) Upon satisfaction of the requirements of Subsection (2)(a), for each category listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the governor, with the concurrence of the attorney general, shall certify in writing to the executive director of the Department of Environmental Quality that all of the requirements have been met, and that any necessary state licensing processes may begin.

(b) Separate certification under this Subsection (4) shall be given for each category in Subsection (3).

(5)(a) The department shall make, by rule, a determination of the dollar amount of the health and economic costs expected to result from a reasonably foreseeable accidental release of waste involving a transfer facility or storage facility, or during transportation of waste, within the exterior boundaries of the state. The department may initiate rulemaking under this Subsection (5)(a) on or after March 15, 2001.

(b)(i) The department shall also determine the dollar amount currently available to cover the costs as determined in Subsection (5)(a):

(A) under nuclear industry self-insurance;

(B) under federal insurance requirements; and

(C) in federal monies.

(ii) The department may not include any calculations of federal monies that may be appropriated in the future in determining the amount under Subsection (5)(b)(i).

(c) The department shall use the information compiled under Subsections (5)(a) and (b) to determine the amount of unfunded potential liability in the event of a release of waste from a storage or transfer facility, or a release during the transportation of waste.

(6)(a) State agencies may not, for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste, enter into any contracts or any other agreements prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application proceeding for a storage facility or transfer facility.

(b) Political subdivisions of the state may not enter into any contracts or any other agreements for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility, or to any organization engaged in the transportation of waste.

(c) This Subsection (6) does not prohibit a state agency from exercising the regulatory authority granted to it by law.

(7)(a) Notwithstanding any other provision of law, any political subdivision may not be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to the satisfaction of the conditions in Subsection (4). These political subdivisions include:

(i) a cooperative;

(ii) a special district authorized by Title 17A, Special Districts;

(iii) a limited purpose local governmental entities authorized by Title 17, Counties;

(iv) any joint power agreement authorized by Title 11, Cities, Counties, and Local Taxing Units; and

(v) the formation of a municipality, or any authority of a municipality authorized by Title 10, Utah Municipal Code.

(b)(i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision authorized and formed under the laws of the state on or after March 15, 2001 which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility is formed in violation of Subsection (7)(a).

(ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political subdivision are considered to have knowingly violated a provision of this part, and the penalties of Section 19-3-312 apply.

(8)(a) An organization may not be formed for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(b) A foreign organization may not be registered to do business in the state for the purpose of providing any goods, services, or municipal-type services to a storage facility or transfer facility prior to:

(i) the satisfaction of the conditions in Subsection (4); and

(ii) the executive director of the department having certified that the requirements of Sections 19-3-304 through 19-3-308 have been met.

(c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

(i) the formation of a new organization or registration of a foreign organization within the state, any of whose purposes are to provide goods, services, or municipal-type services to a storage facility or transfer facility may not be licensed or registered in the state, and the local or foreign organization is void and does not have authority to operate within the state;

(ii) any organization which is formed or registered on or after March 15, 2001, and which subsequently contracts to, or in any manner agrees to provide, or does provide goods, services, or municipal-type services to a storage facility or transfer facility has been formed or registered in violation of Subsection (8)(a) or (b) respectively; and

(iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the organization or the principals of the foreign organization, are considered to have knowingly violated a provision of this part, and are subject to the penalties in Section 19-3-312.

(9)(a)(i) Any contract or agreement to provide any

goods, services, or municipal-type services to any organization engaging in, or attempting to engage in the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state are declared to be against the greater public interest, health, and welfare of the state, by promoting an activity which has the great potential to cause extreme public harm.

(ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or informal, are declared to be void from inception, agreement, or execution as against public policy.

(b)(i) Any contract or other agreement to provide goods, services, or municipal-type services to storage or transfer facilities may not be executed within the state.

(ii) Any contract or other agreement, existing or executed on or after March 15, 2001, is considered void from the time of agreement or execution.

(10)(a) All contracts and agreements under Subsection (10)(b) are assessed an annual transaction fee of 75% of the gross value of the contract to the party providing the goods, services, or municipal-type services to the storage facility or transfer facility or transportation entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or before the last day of each month in accordance with rules established under Subsection (10)(d), and as follows:

(i) 25% of the gross value of the contract to the department; and

(ii) 50% of the gross value of the contract to the Department of Community and Economic Development, to be used by the Utah Division of Indian Affairs as provided in Subsection (11).

(b) Contracts and agreements subject to the fee under Subsection (10)(a) are those contracts and agreements to provide goods, services, or municipal-type services to a storage or transfer facility, or to any organization engaged in the transportation of high-level nuclear waste or greater than class C radioactive waste to a transfer facility or storage facility, and which:

(i) are in existence on March 15, 2001; or

(ii) become effective notwithstanding Subsection (9)(a).

(c) Any governmental agency which regulates the charges to consumers for services provided by utilities or other organizations shall require the regulated utility or organization to include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods, services, or municipal-type services affected by Subsection (10)(b).

(d)(i) The department, in consultation with the State Tax Commission, shall establish rules for the valuation of the contracts and assessment and collection of the fees, and other rules as necessary to determine the amount of and collection of the fee under Subsection (10)(a) The department may initiate rulemaking under this Subsection (d)(i) on or after March 15, 2001.

(ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall make a good faith estimate of the fee under Subsection (10)(a) for calender year 2001, and remit that amount to the department on or before July 31, 2001.

(11)(a) The portion of the fees imposed under Subsection (10) which is to be paid to the Department of Community and Economic Development for use by the Utah Division of Indian Affairs shall be used for establishment of a statewide community and economic development program for the tribes of Native American people within the exterior boundaries of the state who have by tribal procedure established a position rejecting siting of any nuclear waste facility on their reservation lands.

(b) The program under Subsection (11)(a) shall include:

(i) educational services and facilities;

(ii) health care services and facilities;

(iii) programs of economic development;

(iv) utilities;

(v) sewer;

(vi) street lighting;

(vii) roads and other infrastructure; and

(viii) oversight and staff support for the program.

(12) It is the intent of the Legislature that this part does not prohibit or interfere with a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a storage facility or transfer facility within the borders of the state for the placement of high-level nuclear waste or greater than class C radioactive waste.

Amended by ch. 107 § 8, 2001 General Session (S.B. 81).

19-3-302. Legislative intent.

(1)(a) The state of Utah enacts this part to prevent the placement of any high-level nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that high-level nuclear waste or greater than class C radioactive waste may be placed within the exterior boundaries of the state, pursuant to a license from the federal government, or by the federal government itself, in violation of this state law.

(b) Due to this possibility, the state also enacts provisions in this part to regulate transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and protecting the state's interests in environmental and economic resources consistent with 42 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste Policy Act, should the federal government decide to authorize any entity to operate, or operate itself, in violation of this state law.

(2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the Nuclear Waste Policy Act specifically define authorized storage and disposal programs and activities. The state of Utah in enacting this part is not preempted by federal law, since any proposed facilities that would be sited in Utah are not contemplated or authorized by federal law and, in any circumstance, this part is not contrary to or inconsistent with federal law or Congressional intent.

(3) The state of Utah has environmental and economic interests which do not involve nuclear safety regulation, and which must be considered and complied with in siting a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility and in transporting these wastes in the state.

(4) An additional primary purpose of this part is to ensure protection of the state from nonradiological hazards associated with any waste transportation, transfer, storage, decay in storage, treatment, or disposal.

(5) The state recognizes the sovereign rights of Indian tribes within the state of Utah. However, any proposed transfer, storage, decay in storage, treatment, or disposal facility located on a reservation which directly affects and impacts state interests by creating off-reservation effects such as potential or actual degradation of soils and groundwater, potential or actual contamination of surface water, pollution of the ambient air, emergency planning costs, impacts on development, agriculture, and ranching, and increased transportation activity, is subject to state jurisdiction.

(6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear waste or higher than class C radioactive waste. The state does have a long history of regulation of radioactive sources and natural resources and in the transfer, storage, treatment, and transportation of materials and wastes throughout the state. The state finds that its interests are even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust lands primarily to avoid state regulation and state authorities under federal law.

(7)(a) This part is not intended to modify existing state requirements for obtaining environmental approvals, permits, and licenses, including surface and groundwater permits and air quality permits, when the permits are necessary under state and federal law to construct and operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in storage, treatment, or disposal facility.

(b) Any source of air pollution proposed to be located within the state, including sources located within the boundaries of an Indian reservation, which will potentially or actually have a direct and significant impact on ambient air within the state, is required to obtain an approval order and permit from the state under Section 19-2-108.

(c) Any facility which will potentially or actually have a significant impact on the state's surface or groundwater resources is required to obtain a permit under Section 19-5-107 even if located within the boundaries of an Indian reservation.

(8) The state finds that the transportation, transfer, storage, decay in storage, treatment, and disposal of high-level nuclear waste and greater than class C radioactive waste within the state is an ultra-hazardous activity which carries with it the risk that any release of waste may result in enormous economic and human injury.

Amended by ch. 107 § 9, 2001 General Session (S.B. 81).

19-3-303. Definitions.
As used in this part:
(1) "Final judgment" means a final ruling or judgment, including any supporting opinion, that determines the rights of the parties and concerning which all appellate remedies have been exhausted or the time for appeal has expired.
(2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.
(3) "Greater than class C radioactive waste" means low-level radioactive waste that has higher concentrations of specific radionuclides than allowed for class C waste.
(4) "Gross value of the contract" means the totality of the consideration received for any goods, services, or municipal-type services delivered or rendered in the state without any deduction for expense paid or accrued with respect to it
(5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.
(6) "Municipal-type services" includes, but is not limited to:
  (a) fire protection service;
  (b) waste and garbage collection and disposal;
  (c) planning and zoning;
  (d) street lighting;
  (e) life support and paramedic services;
  (f) water;
  (g) sewer;
  (h) electricity;
  (i) natural gas or other fuel; or
  (j) law enforcement.
(7) "Organization" means a corporation, limited liability company, partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise, whether or not for profit.
(8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or disposal.
(9) "Political subdivision" means any county, city, town, school district, public transit district, redevelopment agency, special improvement or taxing district, or other governmental subdivision or public corporation.
(10) "Rule" means a rule made by the department under Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
(11) "Service" or "services" means any work or governmental program which provides a benefit.
(12) "Storage facility" means any facility which stores, holds, or otherwise provides for the emplacement of waste regardless of the intent to recover that waste for subsequent use, processing, or disposal.
(13) "Transfer facility" means any facility which transfers waste from and between transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal transfer points.
(14) "Waste" or "wastes" means high-level nuclear waste and greater than class C radioactive waste.

Amended by ch 107 § 10, 2001 General Session (S.B. 81)

19-3-304 Licensing and approval by governor and Legislature -- Powers and duties of the department.
(1)(a) A person may not construct or operate a waste transfer, storage, decay in storage, treatment, or disposal facility within the exterior boundaries of the state without applying for and receiving a construction and operating license from the state Department of Environmental Quality and also obtaining approval from the Legislature and the governor.
  (b) The Department of Environmental Quality may issue the license, and the Legislature and the governor may approve the license, only upon finding the requirements and standards of this part have been met.
(2) The department shall by rule establish the procedures and forms required to submit an application for a construction and operating license under this part.
(3) The department may make rules implementing this part as necessary for the protection of the public health and the environment, including:
  (a) rules for safe and proper construction, installation, repair, use, and operation of waste transfer, storage, decay in storage, treatment, and disposal facilities;
  (b) rules governing prevention of and responsibility for costs incurred regarding accidents that may occur in conjunction with the operation of the facilities; and
  (c) rules providing for disciplinary action against the license upon violation of any of the licensure requirements under this part or rules made under this part.

Enacted by ch 348, § 4, 1998 General Session.

19-3-305 Application for license.
The application for a construction and operating license shall contain information required by department rules, which shall include:
(1) results of studies adequate to:
  (a) identify the presence of any groundwater aquifers in the area of the proposed site;
  (b) assess the quality of the groundwater of all

aquifers identified in the area of the proposed site;
(c) provide reports on the monitoring of vadose zone and other near surface groundwater;
(d) provide reports on hydraulic conductivity tests; and
(e) provide any other information necessary to estimate adequately the groundwater travel distance;
(2) identification of transportation routes and transportation plans within the state and demonstration of compliance with federal, state, and local transportation requirements;
(3) estimates of the composition, quantities, and concentrations of waste to be generated by the activities covered by the license;
(4) the environmental, social, and economic impact of the facility in the area of the proposed facility and on the state as a whole;
(5) detailed engineering plans and specifications for the construction and operation of the facility and for the closure of the facility;
(6) detailed cost estimates and funding sources for construction, operation, and closure of the facility;
(7) a security plan that includes a detailed description of security measures that would be installed in and around the facility;
(8) a detailed description of site suitability, including a description of the geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the site and vicinity;
(9) specific identification of:
(a) the applicant, the wastes to be accepted, the sources of waste, and the owners and operators of the facility; and
(b) the persons or entities having legal responsibility for the facility and wastes;
(10) quantitative and qualitative environmental and health risk assessments for all proposed activities, including transfer, storage, and transportation of wastes;
(11) technical qualifications, including training and experience of the applicant, staff, and personnel who are to engage in the proposed activities;
(12) a quality assurance program, radiation safety program, and environmental monitoring program;
(13) a regional emergency plan for an area surrounding the facility having at least a 75 mile radius, but which may be greater, if required by department rule; and
(14) any other information and monitoring the department determines necessary to insure the protection of the public health and the environment.

Enacted by ch. 348, § 5, 1998 General Session

19-3-306 Information and findings required for approval by the department.
The department may not issue a construction and operating license unless information in the application:
(1) demonstrates the availability and adequacy of emergency services, including medical, security, and fire response, and environmental cleanup capabilities both at and in the region of the proposed site and for areas involved in the transport of wastes within the state;
(2) establishes financial assurance for operation and closure of the facility and for responding to emergency conditions in transportation and at the facility as required by department rules, including proof the applicant:
(a) possesses substantial resources that are sufficient to respond to any reasonably foreseeable injury or loss resulting from operation of the facility; and
(b) will maintain these resources throughout the term of the facility;
(3) provides evidence the wastes will not cause or contribute to an increase in mortality, an increase in illness, or pose a present or potential hazard to human health or the environment;
(4) provides evidence the personnel employed at the facility have appropriate and sufficient education and training for the safe and adequate handling of the wastes;
(5) demonstrates the public benefits of the proposed facility, including the lack of other available sites or methods for the management of the waste that would be less detrimental to the public health or safety or to the quality of the environment;
(6) demonstrates the technical feasibility of the proposed waste management technology;
(7) demonstrates conformance with federal laws, regulations, and guidelines for a waste facility;
(8) demonstrates conclusively that any facility is temporary and provides identified plans and alternatives for closure of the facility with an enforceable schedule and identified dates for closure, including evidence that:
(a) an identified party has irrevocably agreed to accept the waste at the end of the temporary storage period; and
(b) the waste will be moved to another facility;
(9) demonstrates that:

(a) the applicant is not a limited liability company, limited partnership, or other entity with limited liability; and

(b) the applicant and its officers and directors and those principals or other entities that are participating in and associated with the applicant regarding the facility are willing to accept unlimited strict liability, consistent with federal law, for any financial losses or human losses or injuries resulting from operation of any proposed facility;

(10) provides evidence the applicant has posted a cash bond in the amount of at least two billion dollars or in a greater amount as determined by department rule to be necessary to adequately respond to any reasonably foreseeable releases or losses, or the closure of the facility;

(11) provides evidence the applicant and its officers and directors, the owners or entities responsible for the generation of the waste, principals, and any other entities participating in or associated with the applicant, including landowners, lessors, and contractors, consent in writing to the jurisdiction of the state courts of Utah for any claims, damages, private rights of action, state enforcement actions, or other proceedings relating to the construction, operation, and compliance of the proposed facility; and

(12) demonstrates that any person or entity which sends wastes to a facility shall remain the owner of and responsible for the waste and its ultimate disposal and is willing to accept unlimited, strict liability, consistent with federal law, for any financial or human losses, liabilities, or injuries resulting from the wastes for the entire time period the waste is at the facility.

Enacted by ch. 348, § 6, 1998 General Session

19-3-307 Siting criteria.

(1) The department may not issue a construction and operating license to any waste transfer, storage, decay in storage, treatment, or disposal facility unless the facility location meets the siting criteria under Subsection (2).

(2) The facility may not be located:

(a) within or underlain by:

(i) national, state, or county parks; monuments or recreation areas; designated wilderness or wilderness study areas; or wild and scenic river areas;

(ii) ecologically or scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100-year flood plains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes, or salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated,

(viii) farmlands classified or evaluated as"prime," "unique," or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas within five miles of existing permanent dwellings, residential areas, or other habitable structures, including schools, churches, or historic structures,

(x) areas within five miles of surface waters, including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas within 1,000 feet of archeological sites regarding which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing groundwater which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas;

(b) in areas:

(i) above or underlain by aquifers that:

(A) contain groundwater which has a total dissolved solids content of less than 500 mg/l; and

(B) do not exceed state groundwater standards for pollutants;

(ii) above or underlain by aquifers containing groundwater which has a total dissolved solids content between 3,000 and 10,000 mg/l, when the distance from the surface to the groundwater is less than 100 feet;

(iii) of extensive withdrawal of water, gas, or oil;

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains; or

(vi) where air space use and ground transportation routes present incompatible risks and uses; or

(c) within a distance to existing drinking water wells and watersheds for public water supplies of five years groundwater travel time plus 1,000 feet.

(3) An applicant for a license may request from the department an exemption from any of the siting criteria stated in this section upon demonstration

that the modification would be protective of and have no adverse impacts on the public health and the environment.

Enacted by ch. 348, § 7, 1998 General Session.

19-3-308 Application fee and annual fees.

(1)(a) Any application for a waste transfer, storage, decay in storage, treatment, or disposal facility shall be accompanied by an initial fee of $5,000,000.

(b) The applicant shall subsequently pay an additional fee to cover the costs to the state associated with review of the application, including costs to the state and the state's contractors for permitting, technical, administrative, legal, safety, and emergency response reviews, planning, training, infrastructure, and other impact analyses, studies, and services required to evaluate a proposed facility.

(2) For the purpose of funding the state oversight and inspection of any waste transfer, storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure, including, but not limited to providing for state Department of Environmental Quality, state Department of Transportation, state Department of Public Safety, and other state agencies' technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic, law enforcement, and emergency resources necessary to respond to these facilities, the owner or operator shall pay to the state a fee as established by department rule under Section 63-38-3.2, to be assessed:

(a) per ton of storage cask and high level nuclear waste per year for storage, decay in storage, treatment, or disposal of high level nuclear waste;

(b) per ton of transportation cask and high level nuclear waste for each transfer of high level nuclear waste;

(c) per ton of storage cask and greater than class C radioactive waste for the storage, decay in storage, treatment, or disposal of greater than class C radioactive waste; and

(d) per ton of transportation cask and greater than class C radioactive waste for each transfer of greater than class C radioactive waste.

(3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and Hazard Compensation Account, created in Subsection 19-3-309(3).

(4) The owner or operator of the facility shall pay the fees imposed under this section to the department on or before the 15th day of the month following the month in which the fee accrued.

(5) Annual fees due under this part accrue on July 1 of each year and shall be paid to the department by July 15 of that year.

Enacted by ch. 348, § 8, 1998 General Session
Amended by ch. 107, § 11, 2001 General Session (S B 81).

19-3-309 Restricted account.

(1) There is created within the General Fund a restricted account known as the "Nuclear Waste Facility Oversight Account" and referred to in this section as the "oversight account".

(2)(a) The oversight account shall be funded from the fees imposed and collected under Subsections 19-3-308(1)(a) and(b).

(b) The department shall deposit in the oversight account all fees collected under Subsections 19-3-308(1)(a) and(b).

(c) The Legislature may appropriate the funds in this oversight account to departments of state government as necessary for those departments to carry out their duties to implement this part.

(d) The department shall account separately for monies paid into the oversight account for each separate application made pursuant to Section 19-3-304.

(3)(a) There is created within the General Fund a restricted account known as the "Nuclear Accident and Hazard Compensation Account," to be referred to as the "compensation account" within this part.

(b) The compensation account shall be funded from the fees assessed and collected under this part, except for Subsections 19-3-308(1)(a) and (b).

(c) The department shall deposit in the compensation account all fees collected under this part, except for those fees under Subsections 19-3-308(1)(a) and (b).

(d) The compensation account shall earn interest, which shall be deposited in the account.

(e) The Legislature may appropriate the funds in the compensation account to the departments of state government as necessary for those departments to comply with the requirements of this part.

(4) On the date when a state license is issued in accordance with Subsection 19-3-301(4)(a), the Division of Finance shall transfer all fees remaining in the oversight account attributable to that license into the compensation account.

Enacted by ch. 348, § 9, 1998 General Session.
Amended by ch.107 § 12, 2001 General Session (S.B. 81).

19-3-310 Benefits agreement.

(1) The department may not issue a construction and operating license under this part unless the applicant has entered into a benefits agreement with the department which is sufficient to offset adverse environmental, public health, social, and economic impacts to the state as a whole, and also specifically to the local area in which the facility is to be located.

(2)(a) The benefits agreement shall be attached to and made part of the terms of any license for the facility.

(b) Failure to adhere to the benefits agreement is a ground for the department to take enforcement action against the license, including permanent revocation of the license.

(3) This part may not be construed or interpreted to affect the rights of any person or entity to brings claims against or reach agreements with the applicant for impacts from the facility independent of the benefits agreement.

Enacted by ch. 348, § 10, 1998 General Session.

19-3-311 Length of license.

(1) Any construction and operating license shall be issued for a term established by department rule, but the term may not be longer than 20 years.

(2) The term of the license may be extended beyond 20 years only by approval of the department, the Legislature, and the governor.

Enacted by ch 348, § 11, 1998 General Session

19-3-312 Enforcement -- Penalties.

(1) When the department or the governor has probable cause to believe a person is violating or is about to violate any provision of this part, the department or the governor shall direct the state attorney general to apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity.

(2) In addition to being subject to injunctive relief, any person who violates any provision of this part is subject to a civil penalty of up to $10,000 per day for each violation.

(3) Any person who knowingly violates a provision of this part is guilty of a class A misdemeanor and subject to a fine of up to $10,000 per day.

(4) Any person or organization acting to facilitate a violation of any provision of this part regarding the regulation of greater than class C radioactive waste or high-level nuclear waste is subject to a civil penalty of up to $10,000 per day for each violation, in addition to being subject to injunctive relief

(5) Any person or organization who knowingly acts to facilitate a violation of this part regarding the regulation of high-level nuclear waste or greater than class C radioactive waste is guilty of a class A misdemeanor and is subject to a fine of up to $10,000 per day.

(6)(a) This section does not impose a civil or criminal penalty on any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (6)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any civil or criminal liability or penalty due to membership in the association

Enacted by ch 348, § 12, 1998 General Session.
Amended by ch 107, § 13, 2001 General Session (S B. 81)

19-3-313 Reciprocity.

Waste may not be transported into and transferred, stored, decayed in storage, treated, or disposed of in the state if the state of origin of the waste or the state in which the waste was generated prohibits or limits similar actions within its own boundaries.

Enacted by ch. 348, § 13, 1998 General Session.

19-3-314 Local jurisdiction.

This part does not preclude any political subdivision of the state from establishing additional requirements under applicable state and federal law.

Enacted by ch. 348, § 14, 1998 General Session.

19-3-315 Transportation requirements.

(1) A person may not transport wastes in the state, including on highways, roads, rail, by air, or otherwise, without:

(a) having received approval from the state Department of Transportation; and

(b) having demonstrated compliance with rules of the state Department of Transportation.

(2) The Department of Transportation may:

(a) make rules requiring a transport and route approval permit, weight restrictions, tracking systems, and state escort; and
(b) assess appropriate fees as established under Section 63-38-3.2 for each shipment of waste, consistent with the requirements and limitations of federal law.
(3) The Department of Environmental Quality shall establish any other transportation rules as necessary to protect the public health, safety, and environment.
(4) Unless expressly authorized by the governor, with the concurrence of the Legislature, an easement or other interest in property may not be granted upon any lands within the state for a right of way for any carrier transportation system that:
(a) is not a class I common or contract rail carrier organized and doing business prior to January 1, 1999; and
(b) transports high level nuclear waste or greater than class C radioactive waste to a storage facility within the state.

Amended by ch. 190 § 1, 1999, General Session

19-3-316 Cost recovery.
The owner or transporter or any person in possession of waste is liable, consistent with the provisions of federal law, for any expense, damages, or injury incurred by the state, its political subdivisions, or any person as a result of a release of the waste.

Enacted by ch. 348, § 16, 1998 General Session (S.B. 196).

19-3-317 Severability.
If any provision of this part is held to be invalid, unconstitutional, or otherwise held to be inconsistent with law, the remainder of this part is not affected and remains in full force.

Enacted by ch. 348, § 17, 1998 General Session (S.B. 196).

19-3-318. No limitation of liability regarding businesses involved in high level radioactive waste.
(1) As used in this section:
(a) "Controlling interest" means:
(i) the direct or indirect possession of the power to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting interests, by contract, or otherwise; or
(ii) the direct or indirect possession of a 10% or greater equity interest in an organization.
(b) "Equity interest holder" means a shareholder, member, partner, limited partner, trust beneficiary, or other person whose interest in an organization:
(i) is in the nature of an ownership interest;
(ii) entitles the person to participate in the profits and losses of the organization; or
(iii) is otherwise of a type generally considered to be an equity interest.
(c) "Organization" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, consortium, association, trust, or other entity formed to undertake an enterprise or activity, whether or not for profit.
(d) "Parent organization" means an organization with a controlling interest in another organization.
(e)(i) "Subject activity" means:
(A) to arrange for or engage in the transportation or transfer of high level nuclear waste or greater than class C radioactive waste to or from a storage facility in the state; or
(B) to arrange for or engage in the operation or maintenance of a storage facility or a transfer facility for that waste.
(ii) "Subject activity" does not include the transportation of high level nuclear waste or greater than class C radioactive waste by a class I railroad that was doing business in the state as a common or contract carrier by rail prior to January 1, 1999.
(f) "Subsidiary organization" means an organization in which a parent organization has a controlling interest.
(2)(a) The Legislature enacts this section because of the state's compelling interest in the transportation, transfer, and storage of high level nuclear waste and greater than class C radioactive waste in this state. Legislative intent supporting this section is further described in Section 19-3-302.
(b) Limited liability for equity interest holders is a privilege, not a right, under the law and is meant to benefit the state and its citizens. An organization engaging in subject activities has significant potential to affect the health, welfare, or best interests of the state and should not have limited liability for its equity interest holders. To shield equity interest holders from the debts and obligations of an organization engaged in subject activities would have the effect of attracting capital to enterprises whose goals are contrary to the state's interests.

(c) This section has the intent of revoking any and all statutory and common law grants of limited liability for an equity interest holder of an organization that chooses to engage in a subject activity in this state

(d) This section shall be interpreted liberally to allow the greatest possible lawful recourse against an equity interest holder of an organization engaged in a subject activity in this state for the debts and liabilities of that organization.

(e) This section does not reduce or affect any liability limitation otherwise granted to an organization by Utah law if that organization is not engaged in a subject activity in this state.

(3) Notwithstanding any law to the contrary, if a domestic or foreign organization engages in a subject activity in this state, no equity interest holder of that organization enjoys any shield or limitation of liability for the acts, omissions, debts, and obligations of the organization incurred in this state. Each equity interest holder of the organization is strictly and jointly and severally liable for all these obligations

(4) Notwithstanding any law to the contrary, each officer and director of an organization engaged in a subject activity in this state is individually liable for the acts, omissions, debts, and obligations of the organization incurred in this state.

(5)(a) Notwithstanding any law to the contrary, if a subsidiary organization is engaged in a subject activity in this state, then each parent organization of the subsidiary is also considered to be engaged in a subject activity in this state. Each parent organization's equity interest holders and officers and directors are subject to this section to the same degree as the subsidiary's equity interest holders and officers and directors.

(b) Subsection (5)(a) applies regardless of the number of parent organizations through which the controlling interest passes in the relationship between the subsidiary and the ultimate parent organization that controls the subsidiary.

(6) This section does not excuse or modify the requirements imposed upon an applicant for a license by Subsection 19-3-306(9).

Enacted by ch. 190, § 2, 1999 General Session

Decisions

Ruling on the admissibility of the State's contentions in the high level nuclear waste storage license application proceeding Private Fuel Storage, L L C (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998)

19-3-319. State response to nuclear release and hazards.

(1) The state finds that the placement of high-level nuclear waste inside the exterior boundaries of the state is an ultra-hazardous activity which may result in catastrophic economic and environmental damage and irreparable human injury in the event of a release of waste, and which may result in serious long-term health effects to workers at any transfer or storage facility, or to workers involved in the transportation of the waste.

(2)(a) The state finds that procedures for providing funding for the costs incurred by any release of waste, or for the compensation for the costs of long-term health effects are not adequately addressed by existing law.

(b) Due to these concerns, the state has established a restricted account under Subsection 19-3-309(3), known as the Nuclear Accident and Hazard Compensation Account, and referred to in this section as the compensation account. One of the purposes of this account is to partially or wholly compensate workers for these potential costs, as funds are available and appropriated for these purposes

(3)(a) The department shall require the applicant, and parent and subsidiary organizations of the applicant, to pay to the department not less than 75% of the unfunded potential liability, as determined under Subsection 19-3-301(5), in the form of cash or cash equivalents. The payment shall be made within 30 days after the date of the issuance of a license under this part.

(b) The department shall credit the amount due under Subsection 19-3-306(10) against the amount due under this Subsection (3).

(c) If the payments due under this Subsection (3) are not made within 30 days, as required, the executive director of the department shall cancel the license.

(4)(a) The department shall also require an annual fee from the holder of any license issued under this part This annual fee payment shall be calculated as:

(i) the aggregate amount of the annual payments required by Title 34A, Chapter 2, Workers' Compensation Act, of the licensee and of all parties contracted to provide goods, services, or municipal-type services to the licensee, regarding their employees who are working within the state at any time during the

calendar year; and

(ii) multiplied by the number of storage casks of waste present at any time and for any period of time within the exterior borders of the state during the year for which the fee is assessed.

(b)(i) The licensee shall pay the fee under Subsection (4)(a) to the department. The department shall deposit the fee in the compensation account created in Subsection 19-3-309(3).

(ii) The fee shall be paid to the department on or before March 31 of each calendar year.

(5) The department shall use the fees paid under Subsection (4) to provide medical or death benefits, or both, as is appropriate to the situation, to the following persons for death or any long term health conditions of an employee proximately caused by the presence of the high-level nuclear waste or greater than class C radioactive waste within the state, or a release of this waste within the state that affects an employee's physical health:

(a) any employee of the holder of any license issued under this part, or employees of any parties contracting to provide goods, services, transportation, or municipal-type services to the licensee, if the employee is within the state at any time during the calendar year as part of his employment; or

(b) that employee's family or beneficiaries.

(6) Payment of the fee under Subsection (4) does not exempt the licensee from compliance with any other provision of law, including Title 34A, Chapter 2, regarding workers' compensation.

(7)(a) An agreement between an employer and an employee, the employee's family, or beneficiaries requiring the employee to waive benefits under this section, requiring the employee to seek third party coverage, or requiring an employee contribution is void.

(b) Any employer attempting to secure any agreement prohibited under Subsection (7)(a) is subject to the penalties of Section 19-3-312.

(8)(a) The department, in consultation with the Division of Industrial Accidents within the Labor Commission, shall by rule establish procedures regarding application for benefits, standards for eligibility, estimates of annual payments, and payments.

(b) Payments under this section are in addition to any other payments or benefits allowed by state or federal law, notwithstanding provisions in Title 34A, Chapter 2, regarding workers' compensation.

(c) Payments or obligations to pay under this section may not exceed funds appropriated for these purposes by the Legislature.

(9)(a) Any fee or payment imposed under this section does not apply to any Utah-based nonprofit trade association due to the membership in the organization of a member that is engaging in, or attempting to engage in, the placement of high-level nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility within the state.

(b) Subsection (9)(a) does not apply to a nonprofit trade association if that association takes any affirmative action to promote or assist any individual or organization in efforts to conduct any activity prohibited by this part.

(c) A member of any Utah-based nonprofit trade association is not exempt from any fee or payment under this section due to membership in the association.

Enacted by ch. 107, § 14, 2001 General Session (S.B. 81).

19-3-320 Efforts to prevent siting of any nuclear waste facility to include economic development study regarding Native American reservation lands within the state.

(1) It is the intent of the Legislature that the department, in its efforts to prevent the siting of a nuclear waste facility within the exterior borders of the state, include in its work the study under Subsection (2) and the report under Subsection (3).

(2) It is the intent of the Legislature that the Department of Environmental Quality, in coordination with the office of the governor, and in cooperation with the Departments of Community and Economic Development, Human Services, Health, Workforce Services, Agriculture and Food, Natural Resources, and Transportation, the state Office of Education, and the Board of Regents:

(a) study the needs and requirements for economic development on the Native American reservations within the state; and

(b) prepare, on or before November 30, 2001, a long-term strategic plan for economic development on the reservations.

(3) It is the intent of the Legislature that this plan, prepared under Subsection (2)(b), shall be distributed to the governor and the members of the Legislature on or before December 31, 2001.

Enacted by ch. 269, § 1, 2001 General Session (S.B. 198).

CHAPTER 5
WATER QUALITY ACT

Section

19-5-101 Short title.
This chapter is known as the "Water Quality Act."

19-5-102 Definitions.
As used in this chapter:
(1) "Board" means the Water Quality Board created in Section 19-1-106.
(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
(3) "Discharge" means the addition of any pollutant to any waters of the state.
(4) "Discharge permit" means a permit issued to a person who:
  (a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or
  (b) generates or manages sewage sludge.
(5) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works
(6) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.
(7) "Executive secretary" means the executive secretary of the board.
(8) "Point source":
  (a) 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; and
  (b) does not include return flows from irrigated agriculture.
(9) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

(10) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.
(11) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.
(12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.
(13) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.
(14) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.
(15) "Underground injection" means the subsurface emplacement of fluids by well injection
(16) "Underground wastewater disposal system" means a system for disposing of domestic wastewater discharges as defined by the board and the executive director.
(17) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
(18) "Waters of the state":
  (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state, and
  (b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Amended by ch. 274, § 1, 2001 General Session (H B. 14)

19-5-103 Water Quality Board -- Members of board -- Appointment -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) Committee members currently serving on the Water Pollution Control Committee created under Chapter 126, Laws of Utah 1981, shall serve on the board throughout the terms for which they were appointed.
(2) The board comprises the executive director and ten members appointed by the governor with the consent of the Senate.
(3) No more than five of the appointed members may be from the same political party.
(4) The appointed members, insofar as practicable, shall include the following:
  (a) one member representing the mineral industries;
  (b) one member representing the food processing industries;
  (c) one member representing other manufacturing industries;
  (d) two members who are officials of municipal government or their representatives involved in the management or operation of wastewater treatment facilities;
  (e) one member representing agricultural and livestock interests;
  (f) one member representing fish, wildlife, and recreation interests;
  (g) one member representing improvement and service districts; and
  (h) two members at large, one of whom represents organized environmental interests, selected with due consideration of the areas of the state affected by water pollution and not representing other interests named in this Subsection (4).
(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate.
(6)(a) Except as required by Subsection (6)(b), members shall be appointed for terms of four years and are eligible for reappointment.
  (b) Notwithstanding the requirements of Subsection (6)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(7) Members shall hold office until the expiration of their terms and until their successors are appointed, not to exceed 90 days after the formal expiration of their terms.
(8) The board shall:
  (a) organize and annually select one of its members as chair and one of its members as vice chair;
  (b) hold at least four regular meetings each calendar year; and
  (c) keep minutes of its proceedings which shall be open to the public for inspection.
(9) Special meetings may be called by the chair and must be called by him upon the request of three or

more members of the board.

(10) Each member of the board and the executive secretary shall be notified of the time and place of each meeting.

(11) Six members of the board constitute a quorum for the transaction of business, and the action of a majority of members present is the action of the board.

(12)(a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(c) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(d) Local government members may decline to receive per diem and expenses for their service.

Amended by ch 275, § 4, 2001 General Session (H.B. 16).
Amended by ch. 176, § 24, 2002 General Session (S B. 10).

19-5-104 Powers and duties of board.

(1) The board has the following powers and duties, but the board shall give priority to pollution that results in hazards to the public health:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions, and industries to further the purposes of this chapter;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as the board finds necessary to discharge its duties;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;

(f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, taking into account Subsection (2), to:

(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:

(A) requirements pertaining to applications for loans;

(B) requirements for determination of eligible projects;

(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;

(D) a priority schedule for awarding loans, in which the board may consider in addition to water pollution control needs any financial needs relevant, including per capita cost, in making a determination of priority; and

(E) requirements for determination of the amount of the loan;

(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;

(iii) set effluent limitations and standards subject to Section 19-5-116;

(iv) implement or effectuate the powers and duties of the board; and

(v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;

(g) issue, modify, or revoke orders:

(i) prohibiting or abating discharges;

(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; and

(iv) requiring compliance with this chapter and with rules made under this chapter;

(h) review plans, specifications, or other data relative to disposal systems or any part of disposal systems, and issue construction permits for the installation or modification of treatment works or

any parts of them;

(i) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to control the management of sewage sludge or to prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(j) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture,

(k) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties as appropriate to improve administrative efficiency;

(l) meet the requirements of federal law related to water pollution;

(m) establish and conduct a continuing planning process for control of water pollution including the specification and implementation of maximum daily loads of pollutants;

(n) make rules governing inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for them, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if.

(i) injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may result in the public water system not complying with any national primary drinking water standards or may otherwise adversely affect the health of persons;

(o) make rules governing sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements;

(p) adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions; and

(q) notwithstanding the provisions of Section 19-4-112, make rules governing design and construction of irrigation systems which convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes, and which are constructed after May 4, 1998.

(2) In determining eligible project costs and in establishing priorities pursuant to Subsection (1)(f)(i), the board shall take into consideration the availability of federal grants.

(3) In establishing certification rules under Subsection (1)(p), the board shall:

(a) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;

(b) allow operators until three years after the date of adoption of the rules to obtain initial certification;

(c) allow new operators one year from the date they are hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

(d) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and

(e) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:

(i) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;

(ii) has been employed at least ten years in the operation of that treatment works or sewerage system prior to March 16, 1991; and

(iii) demonstrates to the board his capability to operate the treatment works or sewerage system at which he is currently employed by providing employment history and references as required by the board.

Amended by ch 282 § 1, 2000 General Session
Amended by ch. 274 § 2, 2001 General Session (H.B. 14)

19-5-105 Rulemaking authority and procedure.

(1) Except as provided in Subsection (2), no rule which the board makes for the purpose of the state administering a program under the federal Clean Water Act or the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a

written finding after public comment and hearing and based on evidence in the record that the corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

19-5-106 Executive secretary -- Appointment -- Duties.

The executive secretary shall be appointed by the executive director with the approval of the board, shall serve under the administrative direction of the executive director, and has the following duties:

(1) to develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(2) to advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;

(3) to employ full-time employees as necessary to carry out the provisions of this chapter;

(4) as authorized by the board and subject to the provisions of this chapter, to authorize any employee or representative of the department to enter at reasonable times and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible water pollution;

(5) to encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;

(6) to collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(7) to develop programs for the management of sewage sludge;

(8) as authorized by the board and subject to the provisions of this chapter, to enforce rules made by the board through the issuance of orders which may be subsequently amended or revoked by the board, which orders may include:

(a) prohibiting or abating discharges of wastes into the waters of the state;

(b) requiring the construction of new control facilities or any parts of them or the modification, extension, or alteration of existing control facilities or any parts of them, or the adoption of other remedial measures to prevent, control, or abate water pollution; and

(c) prohibiting any other violation of this chapter or rules made under this chapter;

(9) to review plans, specifications, or other data relative to pollution control systems or any part of the systems provided for in this chapter;

(10) as authorized by the board and subject to the provisions of this chapter, to exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to any state or federal authorities for tax purposes only if the fact of construction, installation, or acquisition of any facility, land, or building, machinery, or equipment, or any part of them conforms with this chapter;

(11) to cooperate, where the board finds appropriate, with any person in studies and research regarding water pollution and its control, abatement, and prevention; and

(12) to represent the state with the specific concurrence of the executive director in all matters pertaining to water pollution, including interstate compacts and other similar agreements.

19-5-107 Discharge of pollutants unlawful -- Discharge permit required.

(1)(a) Except as provided in this chapter or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be placed any wastes in a location where there is probable cause to believe it will cause pollution.

(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(2)(a) A person may not generate, store, treat, process, use, transport, dispose, or otherwise manage sewage sludge, except in compliance with this chapter and rules made under it.

(b) For purposes of injunctive relief, any violation of this subsection is a public nuisance.

(3) It is unlawful for any person, without first securing a permit from the executive secretary as authorized by the board, to:

(a) make any discharge or manage sewage sludge not authorized under an existing valid discharge permit; or

(b) construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works,

or construct, install, or operate any establishment or extension or modification of or addition to any treatment works, the operation of which would probably result in a discharge.

Amended by ch. 271, § 3, 1998 General Session

19-5-108 Discharge permits -- Requirements and procedure for issuance.

(1) The board may prescribe conditions for and require the submission of plans, specifications, and other information to the executive secretary in connection with the issuance of discharge permits.

(2) Each discharge permit shall have a fixed term not exceeding five years Upon expiration of a discharge permit, a new permit may be issued by the executive secretary as authorized by the board after notice and an opportunity for public hearing and upon condition that the applicant meets or will meet all applicable requirements of this chapter, including the conditions of any permit granted by the board.

(3) The board may require notice to the executive secretary of the introduction of pollutants into publicly-owned treatment works and identification to the executive secretary of the character and volume of any pollutant of any significant source subject to pretreatment standards under Subsection 307(b) of the federal Clean Water Act The executive secretary shall provide in the permit for compliance with pretreatment standards.

(4) The board may impose as conditions in permits for the discharge of pollutants from publicly-owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under this chapter or the rules adopted under it.

(5) The board may apply and enforce against industrial users of publicly-owned treatment works, toxic effluent standards and pretreatment standards for the introduction into the treatment works of pollutants which interfere with, pass through, or otherwise are incompatible with the treatment works.

19-5-109 Grounds for revocation, modification, or suspension of discharge permit.

(1) Any permit issued under this chapter may be revoked, modified, or suspended in whole or in part for cause including:

(a) violation of any condition of the permit;

(b) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(c) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(2) For purposes of Subsection (1)(c), "condition" does not include statutory or regulatory effluent limitations enacted or adopted during the permit term, other than for toxic pollutants.

19-5-110 Designation by governor of areas with quality control problems -- Classification of waters -- Adoption of standards of quality.

(1) The governor may identify and designate by boundary, or make a determination not to designate, areas within the state which, as a result of urban-industrial concentration or other factors, have substantial water quality control problems, and designate planning agencies and waste treatment management agencies for these areas.

(2) The board may group the waters of the state into classes according to their present most reasonable uses, and after public hearing, upgrade and reclassify from time to time the waters of the state to the extent that it is practical and in the public interest.

(3)(a) The board may establish standards of quality for each classification consistent with most reasonable present and future uses of the waters, and the standards may be modified or changed from time to time.

(b) Prior to classifying waters, setting quality standards or modifying or repealing them the board shall conduct public hearings for the consideration, adoption, or amendment of the classifications of waters and standards of purity and quality.

(c) The notice shall specify the waters concerning which a classification is sought to be made for which standards are sought to be adopted and the time, date, and place of the hearing.

(d) The notice shall be published at least twice in a newspaper of general circulation in the area affected and shall be mailed at least 30 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the board has reason to believe will be affected by the classification and the setting of standards.

(4)(a) The adoption of standards of quality for the waters of the state and classification of the waters or any modification or change in classification shall be effectuated by an order of the board which shall be published in a newspaper of general circulation in the area affected.

(b) In classifying waters and setting standards of water quality, adopting rules, or making any modification or change in classification or

standards, the board shall allow and announce a reasonable time, not exceeding statutory deadlines contained in the federal Clean Water Act, for persons discharging wastes into the waters of the state to comply with the classification or standards and may, after public hearing if requested by the permittee, set and revise schedules of compliance and include these schedules within the terms and conditions of permits for the discharge of pollutants.

(5) Any discharge in accord with classification or standards authorized by a permit is not pollution for the purpose of this chapter.

19-5-111 Notice of violations -- Hearings.

(1) Whenever the board determines there are reasonable grounds to believe that there has been a violation of this chapter or any order of the board, it may give written notice to the alleged violator specifying the provisions that have been violated and the facts that constitute the violation.

(2) The notice shall require that the matters complained of be corrected.

(3) The notice may order the alleged violator to appear before the board at a time and place specified in the notice and answer the charges.

19-5-112 Hearings conducted by board -- Hearing on denial or revocation of permit conducted by executive director.

(1)(a) The hearings authorized by Section 19-5-111, except hearings for a person who is denied a permit or whose permit has been revoked, may be conducted by the board at a regular or special meeting, or by an examining officer designated by the board.

(b) All decisions shall be rendered by a majority of the board.

(2)(a) A hearing for a person who has been denied a permit, or who has had a permit revoked, shall be conducted before the executive director or his designee.

(b) The decision of the executive director is final and binding on all parties as a final determination of the board unless stayed or overturned on appeal.

19-5-113 Power of board to enter property for investigation -- Records and reports required of owners or operators.

(1) The board or its authorized representative has, after presentation of credentials, the authority to enter at reasonable times upon any private or public property for the purpose of:

(a) sampling, inspecting, or investigating matters or conditions relating to pollution or the possible pollution of any waters of the state, effluents or effluent sources, monitoring equipment, or sewage sludge; and

(b) reviewing and copying records required to be maintained under this chapter.

(2)(a) The board may require a person managing sewage sludge, or the owner or operator of a disposal system, including a system discharging into publicly-owned treatment works, to:

(i) establish and maintain reasonable records and make reports relating to the operation of the system or the management of the sewage sludge;

(ii) install, use, and maintain monitoring equipment or methods;

(iii) sample, and analyze effluents or sewage sludges; and

(iv) provide other information reasonably required.

(b) The records, reports, and information shall be available to the public except as provided in Subsection 19-1-306(2) or Subsections 63-2-304(1) and (2), Government Records Access and Management Act, as appropriate, for other than effluent information.

19-5-114 Spills or discharges of oil or other substance -- Notice to executive secretary.

Any person who spills or discharges any oil or other substance which may cause the pollution of the waters of the state shall immediately notify the executive secretary of the spill or discharge, any containment procedures undertaken, and a proposed procedure for cleanup and disposal, in accordance with rules of the board.

19-5-115 Violations -- Penalties -- Civil actions by board -- Ordinances and rules of political subdivisions.

(1) The terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed $10,000 per day of violation.

(3)(a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding $25,000 per day who with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic

effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed $50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113,

(iii) violates a pretreatment standard or toxic effluent standard for publicly-owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding $10,000 per day of violation if that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

(5)(a) As used in this section:

(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than $250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

(ii) knows at that time that he is placing another person in imminent danger of death or serious bodily injury.

(c) If a person is an organization, it shall, upon conviction of violating Subsection (a), be subject to a fine of not more than $1,000,000.

(d)(i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(e)(i) It is an affirmative defense to prosecution under Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (e) and must prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through 19-5-115(5), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7)(a) The board may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8)(a) The attorney general is the legal advisor for the board and its executive secretary and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a

condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the executive secretary issued under this chapter.

(c) The board may itself initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the board may, through its executive secretary, initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules for the implementation of this chapter that are not inconsistent with this chapter.

(11)(a) Except as provided in Subsection (b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Amended by ch 271, § 4, 1998 General Session

Decisions

Illegal discharges

For discharging waste water in excess of copper concentration limits to publicly owned treatment works in violation of U.S. Clean Water Act, 33 U.S.C. §§ 1317, -1319, corporate defendant fined $1,000,000, and contributed $150,000 to Salt Lake City Corporation, Department of Public Utilities, Water Reclamation Plant, Laboratory & Pretreatment Program, $150,000 to Utah Hazardous Substances Mitigation Fund, and $50,000 to Western States Project Fund; 5 years probation. U.S.A. v. Compeq, International, Dkt. No. 98-CR-297-ALL, U S. District Court, District of Utah.

For discharging waste water containing zinc to publicly owned treatment works in violation of U.S. Clean Water Act, 33 U.S.C. §§ 1319, corporate defendant fined $750,000, and contributed $250,000 to South Davis County Sewer Improvement District, $100,000 to Utah Hazardous Substances Mitigation Fund, and $50,000 to Western States Project Fund. U S A v Syro, Inc., Dkt. No. 98-CR-9-ALL, U.S District Court, District of Utah

19-5-116 Limitation on effluent limitation standards for BOD, SS, Coliforms, and pH for domestic or municipal sewage.

Unless required to meet instream water quality standards or federal requirements established under the federal Water Pollution Control Act, the board shall not establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal sewage which are more stringent than the following:

(1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

(3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000/100 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any seven-day period shall not exceed 2500/100 ml for total coliforms or 250/100 for fecal coliforms.

(4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

19-5-117 Purpose and construction of chapter.

(1) It is the purpose of this chapter to provide:

(a) additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state; and

(b) sufficient authority to allow the state to meet federal requirements for the state's assumption of primacy under the federal Water Pollution Control Act, as amended by the Water Quality Act of 1987, 33 U.S.C. Section 1251 et seq.

(2) Nothing in this chapter:

(a) abridges or alters rights of action or remedies in equity or under common or statutory law, criminal or civil; or

(b) estops the state or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under common or statutory law to suppress nuisances or to abate pollution.

19-5-118 Chapter deemed auxiliary and supplementary to other laws.

This chapter does not repeal any laws relating to the pollution of waters or any conservation laws, but is

auxiliary and supplementary to them except to the extent that the laws are in direct conflict with this chapter.

19-5-119 State permits not required where federal government has primary responsibility.
If for any reason, including cessation of federal funding, the federal government has the primary responsibility for the discharge permit or underground injection permit programs in this state, discharge or underground injection permits established by this chapter are not required.

19-5-120 Sewage permit program fee.
(1) The department may assess a fee established under Section 63-38-3.2 against persons required to obtain a permit under Section 19-5-108 for the management of sewage sludge, to be applied to the costs of administering the sewage permit program required by this chapter.
(2) The total of the combined fees assessed against all permittees under this section may not be more than $28,000 annually.
(3) In establishing the fee for each sludge disposal permit holder, the department shall take into account the proportionate size of the population served by the permit holder.
(4) All proceeds from the fee shall be applied to the administering of the sewage permit program required by this chapter.

19-5-121. Underground wastewater disposal systems -- Certification required to design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules -- Fees.
(1) As used in this section, "maintain" does not include the pumping of an underground wastewater disposal system.
(2)(a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002, a person may not design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system, without first obtaining certification from the board.
(b) An individual is not required to obtain certification from the board to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.
(c) The board shall make rules allowing an uncertified individual to conduct percolation or soil tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:
(i) has the capability of properly conducting the tests; and
(ii) is supervised by a certified individual when conducting the tests.
(3)(a) The board shall adopt and enforce rules for the certification and recertification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.
(b)(i) The rules shall specify requirements for education and training and the type and duration of experience necessary to obtain certification.
(ii) The rules shall recognize the following in meeting the requirements for certification:
(A) the experience of a contractor licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who has five or more years of experience installing underground wastewater disposal systems;
(B) the experience of an environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act; or
(C) the educational background of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
(iii) If eligibility for certification is based on experience, the applicant for certification must show proof of experience.
(4) The department may establish fees in accordance with Section 63-38-3.2 for the testing and certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.

Enacted by ch. 274, § 3, 2001 General Session (H.B. 14).

19-5-122. Underground wastewater disposal systems -- Fee imposed on new systems.
(1) Beginning July 1, 2001, a one-time fee is imposed on each new underground wastewater disposal system installed.
(2)(a) From July 1, 2001 through June 30, 2002, the fee shall be $25.
(b) Beginning July 1, 2002, the fee shall be established by the department in accordance with

Section 63-38-3.2.

(3)(a) The fee shall be paid when plans and specifications for the construction of a new underground wastewater disposal system are approved by the local health department or the Department of Environmental Quality.

(b) A local health department shall remit the fee revenue to the Division of Finance quarterly.

(4) The fee revenue shall be:

(a) deposited into the Underground Wastewater Disposal Restricted Account created in Section 19-5-123; and

(b) used to pay for costs of underground wastewater disposal system training programs.

Enacted by ch 274, § 4, 2001 General Session (H B. 14)

19-5-123. Underground Wastewater Disposal System Restricted Account created -- Contents -- Use of account monies.

(1) The Underground Wastewater Disposal System Restricted Account is created within the General Fund.

(2) The contents of the account shall consist of:

(a) revenue from fees collected under Sections 19-5-121 and 19-5-122; and

(b) interest and earnings on account monies.

(3) Monies in the account shall be appropriated by the Legislature to the department for costs of training, testing, and certifying individuals who design, inspect, maintain, or conduct percolation or soils tests for underground wastewater disposal systems.

Enacted by ch 274, § 5, 2001 General Session (H B. 14).

Utah Code -- Title 63 -- Chapter 46a -- Utah Administrative Rulemaking Act

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63-46a-4. Rulemaking procedure.

(1) Except as provided in Sections **63-46a-6** and **63-46a-7**, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the division to implement this chapter.

(2) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(3) (a) Each agency shall file its proposed rule and rule analysis with the division.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c) (i) The division shall publish the information required under Subsection (3) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the director determines that the rule is too long to publish, the director shall publish the rule analysis and shall publish the rule by reference to a copy on file with the division.

(4) Prior to filing a rule with the division, the department head shall consider and comment on the fiscal impact a rule may have on businesses.

(5) The rule analysis shall contain:

(a) a summary of the rule or change;

(b) the purpose of the rule or reason for the change;

(c) the statutory authority or federal requirement for the rule;

(d) the anticipated cost or savings to:

(i) the state budget;

(ii) local governments; and

(iii) other persons;

(e) the compliance cost for affected persons;

(f) how interested persons may review the full text of the rule;

(g) how interested persons may present their views on the rule;

(h) the time and place of any scheduled public hearing;

(i) the name and telephone number of an agency employee who may be contacted about the rule;

(j) the name of the agency head or designee who authorized the rule;

(k) the date on which the rule may become effective following the public comment period; and

(l) comments by the department head on the fiscal impact the rule may have on businesses.

(6) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (6) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(7) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(8) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(9) (a) Except as provided in Sections **63-46a-6** and **63-46a-7**, a proposed rule becomes effective on any date specified by the agency that is no fewer than 30 nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the division in the form required by the division.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the division.

(d) The division shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the division within 120 days of publication.

Amended by Chapter 138, 2001 General Session
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Rule R317-6. Ground Water Quality Protection.

As in effect on September 1, 2002

Table of Contents

R317-6-1. Definitions.

1.1 "Aquifer" means a geologic formation, group of geologic formations or part of a geologic formation that contains sufficiently saturated permeable material to yield usable quantities of water to wells and springs.

1.2 "Background Concentration" means the concentration of a pollutant in ground water upgradient or lateral hydraulically equivalent point from a facility, practice or activity which has not been affected by that facility, practice or activity.

1.3 "Best Available Technology" means the application of design, equipment, work practice, operation standard or combination thereof at a facility to effect the maximum reduction of a pollutant achievable by available processes and methods taking into account energy, public health, environmental and economic impacts and other costs.

1.4 "Best Available Technology Standard" means a performance standard or pollutant concentration achievable through the application of best available technology.

1.5 "Board" means the Utah Water Quality Board.

1.6 "Class TDS Limit" means the upper boundary of the TDS range for an applicable class as specified in Section R317-6-3.

1.7 "Community Drinking Water System" means a public drinking water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

1.8 "Comparable Quality (Source)" means a potential alternative source or sources of water supply which has the same general quality as the ground water source.

1.9 "Comparable Quantity (Source)" means a potential alternative source of water supply capable of reliably supplying water in quantities sufficient to meet the year-round needs of the users served by the ground water source.

1.10 "Compliance Monitoring Point" means a well, seep, spring, or other sampling point used to determine compliance with applicable permit limits.

1.11 "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.

1.12 "Conventional Treatment" means normal and usual treatment of water for distribution in public drinking water supply systems including flocculation, sedimentation, filtration, disinfection and storage.

1.13 "Discharge" means the release of a pollutant directly or indirectly into subsurface waters of the state.

1.14 "Existing Facility" means a facility or activity that was in operation or under construction after August 14, 1989 and before February 10, 1990.

1.15 "Economically Infeasible" means, in the context of a public drinking water source, the cost to the typical water user for replacement water would exceed the community's ability to pay.

1.16 "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

1.17 "Facility" means any building, structure, processing, handling, or storage facility, equipment or activity; or contiguous group of buildings, structures, or processing, handling or storage facilities, equipment, or activities or combination thereof.

1.18 "Gradient" means the change in total water pressure head per unit of distance.

1.19 "Ground Water" means subsurface water in the zone of saturation including perched ground water.

1.20 "Ground Water Quality Standards" means numerical contaminant concentration levels adopted by the Board in or under R317-6-2 for the protection of the subsurface waters of the State.

1.21 "Infiltration" means the movement of water from the land surface into the pores of rock, soil or sediment.

1.22 "Institutional Constraints" means legal or other restrictions that preclude replacement water delivery and which cannot be alleviated through administrative procedures or market transactions.

1.23 "Lateral Hydraulically Equivalent Point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water at that point has not been affected by the facility.

1.24 "Limit of Detection" means the concentration of a chemical below which it can not be detected using currently accepted sampling and analytical techniques for drinking water as determined by the U.S. Environmental Protection Agency.

1.25 "New Facility" means a facility for which construction or modification is initiated after February 9, 1990.

1.26 "Permit Limit" means a ground water pollutant concentration limitation specified in a Ground Water Discharge Permit and may include protection levels, class TDS limits, ground water quality standards, alternate concentration limits, permit-specific ground water quality standards, or limits stipulated in the application and use of best available technology. For facilities permitted by rule under R317-6-6.2, a permit limit is a ground water pollutant concentration limitation specified in R317-6-6.2.B.

1.27 "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the federal, state, or local government.

1.28 "Point of Discharge" means the area within outermost location at which effluent or leachate has been stored, applied, disposed of, or discharged; for a diked facility, the outermost edge of the dikes.

1.29 "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, munitions, trash, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into waters of the state.

1.30 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the State, or such discharge of any liquid, gaseous, or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.31 "Protection Level" means the ground water pollutant concentration levels specified in R317-6-4.

1.32 "Substantial Treatment" means treatment of water utilizing specialized treatment methods including ion exchange, reverse osmosis, electrodialysis and other methods needed to upgrade water quality to meet standards for public water systems.

1.33 "Technology Performance Monitoring" means the evaluation of a permitted facility to determine compliance with best available technology standards.

1.34 "Total Dissolved Solids (TDS)" means the quantity of dissolved material in a sample of water which is determined by weighing the solid residue obtained by evaporating a measured volume of a filtered sample to dryness; or for many waters that contain more than 1000 mg/l, the sum of the chemical constituents.

1.35 "Radius of Influence" means the radial distance from the center of a well bore to the point

where there is no lowering of the water table or potentiometric surface because of pumping of the well; the edge of the cone of depression.

1.36 "Upgradient" means a point located hydraulically above a facility such that the ground water at that point has not been impacted by discharges from the facility.

1.37 "Vadose Zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

1.38 "Waste" see "Pollutant."

1.39 "Water Table" means the top of the saturated zone of a body of unconfined ground water at which the pressure is equal to that of the atmosphere.

1.40 "Water Table Aquifer" means an aquifer extending downward from the water table to the first confining bed.

1.41 "Waters of the State" means all streams, lakes, ponds, marshes, water courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof; except bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition.

1.42 "Zone of Influence" means the area contained by the outer edge of the drawdown cone of a water well.

R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Cyanide (free)	0.2
Fluoride	4.0

Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Arsenic	0.05
Barium	2.0
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dibromochloropropane	0.0002
2, 4-D	0.07
Diquat	0.02
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Endothall	0.1
Endrin	0.002
Ethylene Dibromide	0.00005
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Polychlorinated Biphenyls	0.0005
Pentachlorophenol	0.001
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1

Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10

OTHER ORGANIC CHEMICALS

Trihalomethanes	0.1

RADIONUCLIDES

The following are the maximum contaminant levels for Radium-226 and Radium-228 beta particle radioactivity, and photon radioactivity:

Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l

Beta particle and photon radioactivity

The average annual concentration from man-made radionuclides of beta particle radionuclides shall not produce an annual dose equivalent to the total body or any millirem/year.

Except for the radionuclides listed below, the concentration of man-made radic or organ dose equivalents shall be calculated on the basis of a two liter per day c data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentrati August 1962, U.S. Department of Commerce. If two or more radionuclides are present to the total body or to any organ shall not exceed four millirem/year.

Average annual concentrations assumed to produce a total body or organ dose of

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Executive Secretary at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-3. Ground Water Classes.

3.1 GENERAL

The following ground water classes are established: Class IA - Pristine Ground Water; Class IB - Irreplaceable Ground Water; Class IC - Ecologically Important Ground Water; Class II - Drinking Water Quality Ground Water; Class III - Limited Use Ground Water; Class IV - Saline Ground Water.

3.2 CLASS IA - PRISTINE GROUND WATER

Class IA ground water has the following characteristics:

A. Total dissolved solids of less than 500 mg/l.

B. No contaminant concentrations that exceed the ground water quality standards listed in Table 1.

3.3 CLASS IB - IRREPLACEABLE GROUND WATER

Class IB ground water is a source of water for a community public drinking water system for which no reliable supply of comparable quality and quantity is available because of economic or institutional constraints.

3.4 CLASS IC - ECOLOGICALLY IMPORTANT GROUND WATER

Class IC ground water is a source of ground water discharge important to the continued existence of wildlife habitat.

3.5 CLASS II - DRINKING WATER QUALITY GROUND WATER

Class II ground water has the following characteristics:

A. Total dissolved solids greater than 500 mg/l and less than 3000 mg/l.

B. No contaminant concentrations that exceed ground water quality standards in Table 1.

3.6 CLASS III - LIMITED USE GROUND WATER

Class III ground water has one or both of the following characteristics:

A. Total dissolved solids greater than 3000 mg/l and less than 10,000 mg/l, or;

B. One or more contaminants that exceed the ground water quality standards listed in Table 1.

3.7 CLASS IV - SALINE GROUND WATER

Class IV ground water has total dissolved solids greater than 10,000 mg/l.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 500 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000 mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background value.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration or 0.25 times the ground water quality standard; however, in no case will the

concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed 1.25 times the background concentration level.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-5. Ground Water Classification for Aquifers.

5.1 GENERAL

A. When sufficient information is available, entire aquifers or parts thereof may be classified by the Board according to the quality of ground water contained therein and commensurate protection levels will be applied.

B. Ground water sources furnishing water to community drinking water systems with ground water meeting Class IA criteria are classified as Class IA.

5.2 CLASSIFICATION AND RECLASSIFICATION PROCEDURE

A. The Board may initiate classification or reclassification.

B. Any person may petition the Board for classification and reclassification.

C. Boundaries for class areas will be delineated so as to enclose distinct ground water classes as nearly as known facts permit. Boundaries will be based on hydrogeologic properties, existing ground water quality and for Class IB and IC, current use. Parts of an aquifer may be classified differently.

D. The petitioner requesting reclassification will provide sufficient information to determine if reclassification is in the best interest of the beneficial users.

E. A petition for classification or reclassification shall include:

1. factual data supporting the proposed classification;

2. a description of the proposed ground waters to be classified or reclassified;

3. potential contamination sources;

4. ground water flow direction;

5. current beneficial uses of the ground water; and

6. location of all water wells in the area to be classified or reclassified.

F. One or more public hearings will be held to receive comment on classification and reclassification proposals.

G. The Board will determine the disposition of all petitions for classification and reclassification, except as provided in R317-6-5.2.H.

H. Ground water proximate to a facility for which an application for a ground water discharge permit has been made may be classified by the Executive Secretary for purposes of making permitting decisions.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of ~~pollutants that may move directly or indirectly into ground water, including, but not limited to:~~ land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317- 6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the

Executive Secretary to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Executive Secretary may require samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Executive Secretary may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Board;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under regulations adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Executive Secretary, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a

reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water regulations;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-113, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or

geothermal energy sources when done in conformance with applicable regulations of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, 1993 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, 1993 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Executive Secretary determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317- 6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant

(mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. The proposed monitoring plan, which includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post- operational monitoring;

6. monitoring well construction and ground water sampling which conform to A Guide to the Selection of Materials for Monitoring Well Construction and Ground Water Sampling, (1983) and RCRA Ground Water Monitoring Technical Enforcement Guidance Manual (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, eighteenth edition, 1992; Library of Congress catalogue number: ISBN: 0-87553-207-1.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4- 79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, (1982); Book 5, Chapter A3.

4. Monitoring requirements in 40 CFR parts 141 and 142, 1991 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, 1991 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD- 2777, U.S. Government Printing Office Stock Number 024-001-03489-1.

6. Manual of Analytical Methods for the Analysis of Pesticide Residues in Humans and Environmental Samples, 1980; Stock Number EPA-600/8-80-038, U.S. Environmental Protection Agency.

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Executive Secretary may issue a ground water discharge permit for a new facility if the Executive Secretary determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Board may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or

applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Board in nearby communities to solicit comment.

C. The Executive Secretary may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Board may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Board under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Board may modify a permit for a new facility to reflect standards adopted as part of corrective action.

6.5 NOTICE OF INTENT TO ISSUE A GROUND WATER DISCHARGE PERMIT

The Executive Secretary shall publish a notice of intent to approve in a newspaper in the affected area and shall allow 30 days in which interested persons may comment to the Board. Final action will be taken by the Executive Secretary following the 30-day comment period.

6.6 PERMIT TERM

A. The ground water discharge permit term will run for 5 years from the date of issuance. Permits may be renewed for 5-year periods or extended for a period to be determined by the Executive Secretary but not to exceed 5 years.

B. In the event that new ground water quality standards are adopted by the Board, permits may be reopened to extend the terms of the permit or to include pollutants covered by new standards. The holder of a permit may apply for a variance under the conditions outlined in R317-6-6.4.D.

6.7 GROUND WATER DISCHARGE PERMIT RENEWAL

The permittee for a facility with a ground water discharge permit must apply for a renewal or extension for a ground water discharge permit at least 180 days prior to the expiration of the existing permit. If a permit expires before an application for renewal or extension is acted upon by the Executive Secretary, the permit will continue in effect until it is renewed, extended or denied.

6.8 TERMINATION OF A GROUND WATER DISCHARGE PERMIT BY THE EXECUTIVE SECRETARY

A ground water discharge permit may be terminated or a renewal denied by the Executive Secretary if one of the following applies:

A. noncompliance by the permittee with any condition of the permit where the permittee has failed to take appropriate action in a timely manner to remedy the permit violation;

B. the permittee's failure in the application or during the permit approval process to disclose fully all significant relevant facts at any time;

C. a determination that the permitted facility endangers human health or the environment and can only be regulated to acceptable levels by plan modification or termination; or

D.the permittee requests termination of the permit.

6.9 PERMIT COMPLIANCE MONITORING

A. Ground Water Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for ground water monitoring, and may specify compliance monitoring points where the applicable class TDS limits, ground water quality standards, protection levels or other permit limits are to be met.

The Executive Secretary will determine the location of the compliance monitoring point based upon the hydrology, type of pollutants, and other factors that may affect the ground water quality. The distance to the compliance monitoring points must be as close as practicable to the point of discharge. The compliance monitoring point shall not be beyond the property boundaries

of the permitted facility without written agreement of the affected property owners and approval by the Executive Secretary.

B. Performance Monitoring

The Executive Secretary may include in a ground water discharge permit requirements for monitoring performance of best available technology standards.

6.10 BACKGROUND WATER QUALITY DETERMINATION

A. Background water quality contaminant concentrations shall be determined and specified in the ground water discharge permit. The determination of background concentration shall take into account any degradation.

B. Background water quality contaminant concentrations may be determined from existing information or from data collected by the permit applicant. Existing information shall be used, if the permit applicant demonstrates that the quality of the information and its means of collection are adequate to determine background water quality. If existing information is not adequate to determine background water quality, the permit applicant shall submit a plan to determine background water quality to the Executive Secretary for approval prior to data collection. One or more up- gradient, lateral hydraulically equivalent point, or other monitoring wells as approved by the Executive Secretary may be required for each potential discharge site.

C. After a permit has been issued, permittee shall continue to monitor background water quality contaminant concentrations in order to determine natural fluctuations in concentrations. Applicable up-gradient, and on- site ground water monitoring data shall be included in the ground water quality permit monitoring report.

6.11 NOTICE OF COMMENCEMENT AND DISCONTINUANCE OF GROUND WATER DISCHARGE OPERATIONS

A. The permittee shall notify the Division of Water Quality immediately upon commencement of the ground water discharge and submit a written notice within 30 days of the commencement of the discharge.

B. The permittee shall notify the Division of Water Quality of the date and reason for discontinuance of ground water discharge within 30 days.

6.12 SUBMISSION OF DATA

A. Laboratory Analyses

All laboratory analysis of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures by the Utah Division of Laboratory Services or by a laboratory certified by the Utah Department of Health.

B. Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified in R317-6-6.3.L.

C. Periodic Submission of Monitoring Reports

Results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results shall be periodically reported to the Executive Secretary according to the schedule specified in the ground water discharge permit.

6.13 REPORTING OF MECHANICAL PROBLEMS OR DISCHARGE SYSTEM FAILURES

The permittee shall notify the Executive Secretary within 24 hours of the discovery of any mechanical or discharge system failures that could affect the chemical characteristics or volume of the discharge. A written statement confirming the oral report shall be submitted to the Executive Secretary within five days of the failure.

6.14 CORRECTION OF ADVERSE EFFECTS REQUIRED

A. If monitoring or testing indicates that the permit conditions may be or are being violated by ground water discharge operations or the facility is otherwise in an out-of-compliance status, the permittee shall promptly make corrections to the system to correct all violations of the discharge permit.

B. The permittee, operator, or owner may be required to take corrective action as described in R317- 6-6.15 if a pollutant concentration has exceeded a permit limit.

6.15 CORRECTIVE ACTION

It is the intent of the Board that the provisions of these regulations should be considered when making decisions under any state or federal superfund action; however, the protection levels are not intended to be considered as applicable, relevant or appropriate clean-up standards under such other regulatory programs.

A. Application of R317-6-6.15

1. Generally - R317-6-6.15 shall apply to any person who discharges pollutants into ground water in violation of Section 19-5-107, or who places or causes to be placed any wastes in a location where there is probable cause to believe they will cause pollution of ground water in violation of Section 19-5-107.

2. Corrective Action shall include, except as otherwise provided in R317-6-6.15, preparation of a Contamination Investigation and preparation and implementation of a Corrective Action Plan.

3. The procedural provisions of R-317-6-6.15 shall not apply to any facility where a corrective or remedial action for ground water contamination, that the Executive Secretary determines meets the substantive standards of this rule, has been initiated under any other state or federal program. Corrective or remedial action undertaken under the programs specified in Table 2 are considered to meet the substantive standards of this rule unless otherwise determined by the Executive Secretary.

TABLE 2

PROGRAM

Leaking Underground Storage Tank, Sections 19-6-401, et seq.

Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.

Hazardous Waste Mitigation Act, Sections 19-6-301 et seq.

Utah Solid and Hazardous Waste Act, Sections 19-6-101 et seq.

B. Notification and Interim Action

1. Notification - A person who spills or discharges any oil or other substance which may cause pollution of ground waters in violation of Section 19-5-107 shall notify the Executive Secretary within 24 hours of the spill or discharge. A written notification shall be submitted to the Executive Secretary within five days after the spill or discharge.

2. Interim Actions - A person is encouraged to take immediate, interim action without following the steps outlined in R317-6-6.15 if such action is required to control a source of pollutants. Interim action is also encouraged if required to protect public safety, public health and welfare and the environment, or to prevent further contamination that would result in costlier clean-up. Such interim actions should include source abatement and control, neutralization, or other actions as appropriate. A person that has taken these actions shall remain subject to R317-6-6.15 after the interim actions are completed unless he demonstrates that:

a. no pollutants have been discharged into ground water in violation of 19-5-107; and

b. no wastes remain in a location where there is probable cause to believe they will cause pollution of ground water in violation of 19-5-107.

C. Contamination Investigation and Corrective Action Plan - General

1. The Executive Secretary may require a person that is subject to R317-6-6.15 to submit for the Executive Secretary's approval a Contamination Investigation and Corrective Action Plan, and may require implementation of an approved Corrective Action Plan. A person subject to this rule who has been notified that the Executive Secretary is exercising his or her authority under R317-6-6.15 to require submission of a Contamination Investigation and Corrective Action Plan, shall, within 30 days of that notification, submit to the Executive Secretary a proposed schedule for those submissions, which may include different deadlines for different elements of the Investigation and Plan. The Executive Secretary may accept, reject, or modify the proposed schedule.

2. The Contamination Investigation or the Corrective Action Plan may, in order to meet the requirements of this Part, incorporate by reference information already provided to the Executive Secretary in the Contingency Plan or other document.

3. The requirements for a Contamination Investigation and a Corrective Action Plan specified in R317- 6-6.15.D are comprehensive. The requirements are intended to be applied with flexibility, and persons subject to this rule are encouraged to contact the Executive Secretary's staff to assure its efficient application on a site-specific basis.

4. The Executive Secretary may waive any or all Contamination Investigation and Corrective Action Plan requirements where the person subject to this rule demonstrates that the information that would otherwise be required is not necessary to the Executive Secretary's evaluation of the Contamination Investigation or Corrective Action Plan. Requests for waiver shall be submitted to the Executive Secretary as part of the Contamination Investigation or Corrective Action Plan, or may be submitted in advance of those reports.

D. Contamination Investigation and Corrective Action Plan - Requirements

1. Contamination Investigation - The contamination investigation shall include a characterization of pollution, a characterization of the facility, a data report, and, if the Corrective Action Plan proposes standards under R317-6-6.15.F.2. or Alternate Corrective Action Concentration Limits higher than the ground water quality standards, an endangerment assessment.

a. The characterization of pollution shall include a description of:

(1) The amount, form, concentration, toxicity, environmental fate and transport, and other significant characteristics of substances present, for both ground water contaminants and any contributing surficial contaminants;

(2) The areal and vertical extent of the contaminant concentration, distribution and chemical make- up; and

(3) The extent to which contaminant substances have migrated and are expected to migrate.

b. The characterization of the facility shall include descriptions of:

(1) Contaminant substance mixtures present and media of occurrence;

(2) Hydrogeologic conditions underlying and, upgradient and downgradient of the facility;

(3) Surface waters in the area;

(4) Climatologic and meteorologic conditions in the area of the facility; and

(5) Type, location and description of possible sources of the pollution at the facility;

(6) Groundwater withdrawals, pumpage rates, and usage within a 2-mile radius.

c. The report of data used and data gaps shall include:

(1) Data packages including quality assurance and quality control reports;

(2) A description of the data used in the report; and

(3) A description of any data gaps encountered, how those gaps affect the analysis and any plans to fill those gaps.

d. The endangerment assessment shall include descriptions of any risk evaluation necessary to support a proposal for a standard under R317-6-6.15.F.2 or for an Alternate Corrective Action Concentration Limit.

e. The Contamination Investigation shall include such other information as the Executive Secretary requires.

2. Proposed Corrective Action Plan

The proposed Corrective Action Plan shall include an explanation of the construction and operation of the proposed Corrective Action, addressing the factors to be considered by the Executive Secretary as specified in R317- 6-6.15.E. and shall include such other information as the Executive Secretary requires. It shall also include a proposed schedule for completion.

E. Approval of the Corrective Action Plan

After public notice in a newspaper in the affected area and a 30-day period for opportunity for public review and comment, the Executive Secretary shall issue an order approving, disapproving, or modifying the proposed Corrective Action Plan. The Executive Secretary shall consider the following factors and criteria in making that decision:

1. Completeness and Accuracy of Corrective Action Plan.

The Executive Secretary shall consider the completeness and accuracy of the Corrective Action Plan and of the information upon which it relies.

2. Action Protective of Public Health and the Environment

a. The Corrective Action shall be protective of the public health and the environment.

b. Impacts as a result of any off-site activities shall be considered under this criterion (e.g., the transport and disposition of contaminated materials at an off-site facility).

3. Action Meets Concentration Limits

The Corrective Action shall meet Corrective Action Concentration Limits specified in R317-6-6.15.F, except as provided in R317-6-6.15.G.

4. Action Produces a Permanent Effect

a. The Corrective Action shall produce a permanent effect.

b. If the Corrective Action Plan provides that any potential sources of pollutants are to be controlled in place, any cap or other method of source control shall be designed so that the discharge from the source following corrective action achieves ground water quality standards or, if approved by the Board, alternate corrective action concentration limits (ACACLs). For purposes of this paragraph, sources of pollutants are controlled "in place" even though they are moved within the facility boundaries provided that they are not moved to areas with unaffected ground water.

5. Action May Use Other Additional Measures

The Executive Secretary may consider whether additional measures should be included in the Plan to better assure that the criteria and factors specified in R317-6-6.15.E are met. Such measures may include:

a. Requiring long-term ground water or other monitoring;

b. Providing environmental hazard notices or other security measures;

c. Capping of sources of ground water contamination to avoid infiltration of precipitation;

d. Requiring long-term operation and maintenance of all portions of the Corrective Action; and

e. Periodic review to determine whether the Corrective Action is protective of public health and the environment.

F. Corrective Action Concentration Limits

1. Contaminants with specified levels

Corrective Actions shall achieve ground water quality standards or, where applicable, alternate corrective action concentration limits (ACACLs).

2. Contaminants without specified levels

For contaminants for which no ground water quality standard has been established, the proposed Corrective Action Plan shall include proposed Corrective Action Concentration Limits. These levels shall be approved, disapproved or modified by the Executive Secretary after considering U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk-based contaminant levels or standards established by other regulatory agencies and other relevant information.

G. Alternate Corrective Action Concentration Limits

An Alternate Corrective Action Concentration Limit that is higher or lower than the Corrective Action Concentration Limits specified in R317-6-6.15.F may be required as provided in the following:

1. Higher Alternate Corrective Action Concentration Limits

A person submitting a proposed Corrective Action Plan may request approval by the Board of an Alternate Corrective Action Concentration Limit higher than the Corrective Action Concentration Limit specified in R317-6- 6.15.F. The proposed limit shall be protective of human health, and the environment, and shall utilize best available technology. The Corrective Action Plan shall include the following information in support of this request:

a. The potential for release and migration of any contaminant substances or treatment residuals that might remain after Corrective Action in concentrations higher than Corrective Action Concentration Limits;

b. An evaluation of residual risks, in terms of amounts and concentrations of contaminant substances remaining following implementation of the Corrective Action options evaluated, including consideration of the persistence, toxicity, mobility, and propensity to bioaccumulate such contaminants substances and their constituents; and

c. Any other information necessary to determine whether the conditions of R317-6-6.15.G have been met.

2. Lower Alternate Corrective Action Concentration Limits

The Board may require use of an Alternate Corrective Action Concentration Limit that is lower than the Corrective Action Concentration Limit specified in R317-6-6.15.F if necessary to protect human health or the environment. Any person requesting that the Board consider requiring a lower Alternate Corrective Action Concentration Limit shall provide supporting information as described in R317-6-6.15.G.3.

3. Protective of human health and the environment

The Alternate Corrective Action Concentration Limit must be protective of human health and the

environment. In making this determination, the Board may consider:

a. Information presented in the Contamination Investigation;

b. Other relevant cleanup or health standards, criteria, or guidance;

c. Relevant and reasonably available scientific information;

d. Any additional information relevant to the protectiveness of a Corrective Action; and

e. The impact of additional proposed measures, such as those described in R317-6-6.15.E.5.

4. Good cause

An Alternate Corrective Action Concentration Limit shall not be granted without good cause.

a. The Board may consider the factors specified in R317-6-6.15.E in determining whether there is good cause.

b. The Board may also consider whether the proposed remedy is cost-effective in determining whether there is good cause. Costs that may be considered include but are not limited to:

(1) Capital costs;

(2) Operation and maintenance costs;

(3) Costs of periodic reviews, where required;

(4) Net present value of capital and operation and maintenance costs;

(5) Potential future remedial action costs; and

(6) Loss of resource value.

5. Conservative

An Alternate Corrective Action Concentration Limit that is higher than the Corrective Action Concentration Limits specified in R317-6-6.15.F must be conservative. The Board may consider the concentration level that can be achieved using best available technology if attainment of the Corrective Action Concentration Limit is not technologically achievable.

6. Relation to background and existing conditions

a. The Board may consider the relationship between the Corrective Action Concentration Limits and background concentration limits in considering whether an Alternate Corrective Action Concentration Limit is appropriate.

b. No Alternate Corrective Action Concentration Limit higher than existing ground water contamination levels or ground water contamination levels projected to result from existing conditions will be granted.

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the concentration of a pollutant in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Executive Secretary in writing within 30 days of receipt of data;

2. Initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. two consecutive samples from a compliance monitoring point exceed:

a. one or more permit limits; and

b. the mean ground water pollutant concentration for that pollutant by two standard deviations (the standard deviation and mean being calculated using values for the ground water pollutant at that compliance monitoring point); or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988.

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Executive Secretary a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Executive Secretary

The Executive Secretary shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Executive Secretary shall not initiate a compliance action if the Executive Secretary determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit

conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Executive Secretary, for the Executive Secretary's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

6.17 PROCEDURE WHEN A FACILITY IS OUT-OF-COMPLIANCE

A. If a facility is out of compliance the following is required:

1. The permittee shall notify the Executive Secretary of the out of compliance status within 24 hours after detection of that status, followed by a written notice within 5 days of the detection.

2. The permittee shall initiate monthly sampling, unless the Executive Secretary determines that other periodic sampling is appropriate, until the facility is brought into compliance.

3. The permittee shall prepare and submit within 30 days to the Executive Secretary a plan and time schedule for assessment of the source, extent and potential dispersion of the contamination, and an evaluation of potential remedial action to restore and maintain ground water quality and insure that permit limits will not be exceeded at the compliance monitoring point and best available technology will be reestablished.

4. The Executive Secretary may require immediate implementation of the contingency plan submitted with the original ground water discharge permit in order to regain and maintain compliance with the permit limit standards at the compliance monitoring point or to reestablish best available technology as defined in the permit.

5. Where it is infeasible to re-establish BAT as defined in the permit, the permittee may propose an alternative BAT for approval by the Executive Secretary.

6.18 GROUND WATER DISCHARGE PERMIT TRANSFER

A. The permittee shall give written notice to the Executive Secretary of any transfer of the ground water discharge permit, within 30 days of the transfer.

B. The notice shall include a written agreement between the existing and new permittee establishing a specific date for transfer of permit responsibility, coverage and liability.

6.19 ENFORCEMENT

These rules are subject to enforcement under Section 19-5-115 of the Utah Water Quality Act.

6.20 HEARING AND APPEALS

A. Any person may request a hearing before the Board who:

1. is denied a permit by rule by the Executive Secretary under R317-6-6.2;

2. objects to a discharge limit established by the Executive Secretary;

3. objects to conditions or limitations proposed or established by the Executive Secretary in the ground water discharge permit; or

4. objects to monitoring, sampling, information, or other requests or requirements made by the Executive Secretary;

5. objects to denial by the Executive Secretary of a proposed Corrective Action Plan under R317-6- 6.15; or

6. objects to conditions proposed or established by the Executive Secretary in a Corrective Action Plan under R317-6-6.15.

B. Any person who is denied a permit or whose permit is proposed to be terminated or revoked by the Executive Secretary may appeal that decision to the Executive Director of the Department of Environmental Quality pursuant to Section 19-5-112(2).

C. Hearings under R317-6 will be conducted using the Utah Administrative Procedures Act, Title 63, Chapter 46b.

KEY

water quality, ground water

Date of Enactment or Last Substantive Amendment

January 22, 2002

Notice of Continuation

December 12, 1997

~~**Authorizing, Implemented, or Interpreted Law**~~

19-5

STATE REGULATION STATUS

State: Utah
[Two amendments reviewed are identified by a ★ at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number: 2-248
Date: November 22, 2002

NRC Chronology Identification	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F)[1] Rule / ML #[4]	NRC Review / Y, N[2] / Date / ML #[4]	Final State Regulation[1] (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			1/10/94
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required[3]
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F	N 2/10/98	1/23/98
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			10/26/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	P	N 1/26/98	3/10/95
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required[3]
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	N 1/8/97	11/15/96
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 6/14/00	3/10/00
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	P	N 9/23/96	5/31/96
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1			Not required[3]
★Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	F ML023100574	N 11/22/02 ML023290240	10/7/02[5]
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 2/10/98	7/18/97
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)	1995-1	F	N 2/10/98	7/18/97
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P	N 1/26/98	3/20/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	P	N 1/26/98	1/23/98
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			7/18/97
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P	N 1/26/98	3/20/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 2/10/98	7/18/97
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P	N 1/26/98	8/11/98

NRC Chronology Identification	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F)[1] Rule / ML #[4]	NRC Review / Y, N[2] / Date / ML #[4]	Final State Regulation[1] (Effective Date)
10 CFR Part 71: Compatibility with the International Atomic Energy Agency - Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	F	N 4/16/99	3/12/99
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2	F	N 2/10/98	Not required[3]
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F Part 30	N 2/10/98	3/20/98
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	P	N 1/26/98	3/20/98
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			6/11/99
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	P	N 1/26/09	3/20/98
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required[3]
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F	N 4/1/98	5/15/97
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 6/14/00	3/10/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F	N 4/16/99	3/12/99
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML011100015	N 7/31/01 ML012150220	1/26/01
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required[3]
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required[3]
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	P ML010870073	N 4/27/01 ML011170330	5/11/01
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML013530478	Y 2/7/02 ML020390486	9/14/01
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML013530478	N 2/7/02 ML020390486	9/14/01
★Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML023100574	N 11/22/02 ML023290240	10/7/02[5]
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required[3]
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	F ML013530478	N 2/7/02 ML020390486	9/14/01

NRC Chronology Identification	FR Notice (Due Date for State Implementation)	RATS ID	Proposed (P) / Final (F)[1] Rule / ML #[4]	NRC Review / Y, N[2] / Date / ML #[4]	Final State Regulation[1] (Effective Date)
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML012850044	N 12/27/01 ML020020182	9/14/01
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	P Part 34 ML010870073	N 4/27/01 ML011170330	
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, and 32	65 FR 79162; (2/16/04)	2001-1			
Revision of the Skin Dose Limit-Part 20 that became effective April 5, 2002.	67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (4/24/05)	2002-2			

1. Or other generic Legally Binding Requirements.

2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address.
N means "No," there are no comments in the review letter.

3. Not required means these regulations are not required for purposes of compatibility.

4. ADAMS ML Number

5. The regulation package contained several regulations with earlier effective dates. The uranium milling regulations are not to be implemented until the amended Agreement is signed and effective.

NRC STP Procedure Approval
SA-700
Utah Applicable Statues and Rules

STP PROCEDURE APPROVAL
SA-700
UTAH APPLICABLE STATUES AND RULES

4.1.1 Program/Agreement Authority: Utah Code Annotated (UCA) 19-3-113

4.1.1.1 State Law

a. UCA 19-3-113

b. UCA 19-3-104, Utah Radiation Control Rule (URC) R313-19-2

1. URC R313-12
2. URC R313-12
3. URC R313-19-30
4. URC R313-19
5. URC R313-19

c. UCA 19-3-104, 19-3-105

d. UCA 19-3-108

e. URC R313-19-20

f. UCA 19-109 thru 111
URC R313-14

Regulation of low-level waste: UCA 19-3-104(8), URC R313-25

4.1.1.2 Evaluation Criteria

a. UCA 19-3-113

b. The rules will be modified to accommodate reservation of Authority to the NRC.

c. UCA 19-3-104 & 105, URC R313-19-30

d. URC R313-12-54

e. URC R313-12-55

f. UCA 19-3-103.5

g. URC R313-12-52

h. UCA 19-3-108 thru 111

I. URC R313-14-15, UCA 19-3-108

4.1.1.3 Low-level waste

URC R313-25

UCA 19-3-104 thru 106

4.1.1.4 11.e(2)

a. Adoption of UCA 19-3-104(3)(d)

b. Adoption of 10 CFR 40
UCA 19-3-104(3)(b)

c. URC R313-17

1. URC R313-17-2
2. The URC rules will be modified in R313-17 to allow for the preparation of a written environmental analysis.
3. & 4. URC R313-17
5. The rules will be modified in URC R313-17 to ban construction before completion of the written environmental analysis.

d. URC R313-17
UCA 19-3-103.5

e. The rules will be modified to require the program, before terminating 11e.(2) byproduct material license, to do the following:

(1) transfer funds collected for decommissioning and long-term surveillance and maintenance to the United States. The rule will require this transfer when custody of the deposal site transfers to the Untied Sates. Funds transferred must include all funds collected from a licensee or it surety. The only exceptions are funds collected for decommissioning if it is completed.

(2) choose whether or not to take title to the disposal site and byproduct material; and

(3) obtain a determination from the Commission that all applicable standards are satisfied.

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ROUTINE PROCEDURES
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1.00 OVERVIEW OF ROUTINE PROCEDURES

This document is proposed as a method to clarify general policy for the Radioactive Materials Inspection Programs as follows:

- To define specific requirements for a performance-based materials inspection program that gives licensees credit for good performance by extending the interval of the next inspection and requires poor performers to be inspected more frequently.

- To place the major emphasis of the materials inspection program on timely and thorough follow-up of events.

- To establish inspection priorities for all licensees and types of inspections.

- To aid in the achievement of a consistent process of inspection for materials licensees.

The Radioactive Materials Inspection Program designates priorities for various types of inspections. Reactive inspections are considered as having the highest priority, followed by core inspections. Reactive inspections include allegations, misadministration, overexposure, loss or release of significant quantities of radioactive materials and incident or special investigation inspections. Core inspections include initial and routine inspections. Termination inspections for licensees that used sealed sources or short lived isotopes would be of the lowest priority and are performed as resources permit.

Each new license issued is reviewed by a Division of Radiation Control (DRC) license reviewer. The reviewer determines the license category and inspection priority and schedules the initial inspection. License category, inspection frequency, DRC/NRC program codes and DRC/NRC Priority codes can be identified by use of, Table A, Radioactive Material License Inspection Program, dated, September 1998 (Attachment 1). If a license involves more than one type of use, the type associated with the highest priority (most frequent) inspection shall establish the inspection priority.

2.00 GENERAL LICENSE PROCEDURES and REQUIREMENTS

2.01 Definition of inspection

An inspection is the act of assessing licensee performance to determine whether the licensee is using radioactive material safely and whether an individual or organization is in compliance with established standards, such as rules, license conditions, and the licensee commitments submitted in support of a license and incorporated by "tie down" conditions. Inspections involve a visit to a licensee's facility and/or temporary job site by a representative of the Executive Secretary, observations of licensed activities, interaction with licensee personnel, and transmission of the inspection findings. Pre-licensing visits or telephonic communications are not considered inspections.

2.02 Unannounced Inspections

All inspections contain certain routine steps or requirements. One major concern is that all routine materials inspections should be performed on an unannounced basis. Additional routine procedures to be taken by the inspector are described below.

2.03 Preparation for an Inspection

First the inspector prepares for the inspection by reviewing appropriate background material (e.g., license, past inspection reports, incident reports, related allegations, and other pertinent information). The inspector identifies the location of the licensee and works out travel arrangements. The inspector should develop an itinerary and discuss special aspects of the inspection with his or her supervisor. Finally, the inspector selects appropriate and calibrated radiation detection instrumentation to take and acquires the necessary inspection forms.

2.04 Performing the inspection

The second part of the process is where the inspector conducts the onsite inspection. This begins with an entrance meeting with appropriate licensee personnel. Inspectors should ensure that licensee management is made aware of the inspection. Observations of licensee operations, interviews with staff, document review to complement and support inspector observations, and radiation surveys to obtain independent and confirmatory measurements should then be conducted. Emphasis should be placed on observing licensee performance as it relates to staff training, equipment operation and adequacy, overall management of the licensed program, and integration of safety. Review of licensee records and other documents should be directed toward verifying that

current operations are in compliance and further review of "historical" records should only occur if the current records are out of compliance and the inspector believes it necessary to determine the presence of a prevalent or persistent problem. Finally, the inspection concludes with an exit meeting with licensee management.

2.05 Inspection Methods

To the maximum extent practicable, inspectors should ascertain whether a licensee is in compliance with specific provisions of the license and the rules by direct observation of work activities, demonstrations of how the licensee performs a DRC-required test or other activity, interviews of licensee employees, and, in appropriate cases, by independent measurements of radiation and air concentrations. Less reliance should be placed on determining compliance based solely on information in licensee records.

2.06 Closeout of Inspection with DRC Management

After returning from an inspection trip, the inspector shall discuss the results of the inspection trip with his or her supervisor. This discussion should be sufficient to alert management to significant enforcement, safety, or regulatory issues. This meeting need not be documented, but it should be held in all cases. To complete the inspection, the inspector documents the inspection results in accordance with guidance.

2.07 NOV'S General Guidance.

The Notice of Violation (RAMinsp.wcm at I\rad\director\let_macs\winmacs) explains that the notice is sent pursuant to the provisions of R313-14 and that the licensee should provide, within 30 days, a written statement or explanation which includes:

a. Corrective steps which have been taken and the results achieved;

b. Corrective steps which will be taken to avoid further violations; and

c. The date when full compliance will be achieved

Other specific responses or actions may be required in enforcement letters. The inspector assigned to follow-up on the licensee's actions should therefore conduct a careful review of the enforcement letter. In addition, inspection reports may contain concerns with licensee performance, valuable as background information to the inspector.

3.00 SPECIFIC REQUIREMENTS

3.01 Written Inspection Plans

Inspections of major licensees shall include all of the afore mentioned general requirements and should include the use of an written inspection plan. Inspection plans should be developed for all routine inspections of major licensees and all team inspections. Major licensees include those programs that routinely use large quantities of radioactive material, such that special facilities and procedures are necessary for handling and control (i.e., broad-scope academic, broad-scope medical licensees, and large manufacturers). Inspection plans may also be developed for any other inspections, as decided by the Executive Secretary. The inspection field notes should be documented (a Supplemental Comment will suffice) to indicate whether or not an inspection plan was prepared. After the inspection, the inspection plan may be discarded.

a. The inspection plan sets specific requirements and priorities to aid in the achievement of a consistent process for inspection of materials licensees.

3.02 Management Meetings - Entrance and Exit Interview

The objective of these meetings and interviews is to assure that licensee management is aware of the overall scope and schedule for the inspection to be performed and that they are apprized of the preliminary findings of the inspection including any apparent noncompliance with regulatory requirements or other safety related concerns prior to the inspector leaving the site.

3.03 Entrance Interview

a. If more than one inspector is involved, they will review the scope of the proposed inspection prior to the entrance interview with the licensee and confirm at this time that only one inspector (the lead inspector) will be spokesperson during entrance and exit interviews.

b. An entrance interview shall be conducted with the most senior licensee representative available who is directly responsible for the areas to be inspected.

c. During the entrance interview, the inspector should address the following as related to the functional areas to be examined during the inspection, as appropriate.

(1) Status of resolution of outstanding inspection items.

(2) Status of corrective action relating to licensee commitments in correspondence.

(3) Scope of inspection including estimated duration.

(4) Records, procedures or documents to be reviewed.

(5) Personnel to be interviewed.

(6) Special tests or activities to be witnessed which require coordination between the inspector and the licensee.

3.04 Exit Interview

a. If the lead inspector has allowed the assistant inspector to conduct inspection activities independently, the findings of the assistant inspector(s) must be communicated to the lead inspector prior to the exit interview.

b. At the conclusion of each inspection, an exit interview shall be conducted with the most senior licensee representative at the location of the inspection.

c. During the exit interview, the licensee representative should be made aware of the preliminary inspection findings including any apparent items of noncompliance with requirements of Utah Radiation Control Rules, safety related concerns, or unresolved items identified during the inspection. Significant safety concerns must receive immediate attention from the licensee.

3.05 Interview Guidance

a. Do not discuss trivia, don't ramble, present your point concisely and support your position with facts.

b. When the senior most licensee representative is not available, the interview will be conducted with the next lower level of licensee management.

c. At the entrance interview, if desired, the licensee representative may be given an indication of the tentative schedule for discussing or reviewing selected inspection items with various licensee staff personnel.

d. Certain inspection items involving visual observations and/or records review may be performed better when they are unannounced. If the inspector believes that prior notification is undesirable, then the inspector may elect to not discuss the items during the Entrance Interview.

e. Identification of personnel to be interviewed may enhance inspector efficiency and give the licensee the opportunity to have the most knowledgeable individual present to respond in the areas being inspected. If no prior notification to the licensee of an area to be inspected is planned, then this item is not to be discussed during the opening interview.

f. The licensee should have been informed of preliminary negative findings in a timely manner before the exit interview - no surprises.

g. If items of noncompliance or safety concerns are identified that affect continued operation of a facility, in violation of significant regulatory requirements, or the facility is operating in an unsafe manner, prompt corrective action must be initiated by the licensee. The inspector should not leave the site until the concern is fully understood by the licensee and corrective action has been initiated. If disagreement exists between the inspector and the licensee as to the magnitude of the concern relative to continued operation, the inspector's section manager should be notified immediately.

3.06 Permissible Frequency of Inspection

To achieve the goals of cost saving and efficient use of staff time, inspections (other than initial inspections) may be performed at a frequency other than that defined by the license category system. However, the frequency of inspection for a licensee should not fall outside the following points:

Type of Inspection	Permissible Frequency
Initial inspections of new licensees	Should be within 6 months for categories I through V.
Inspection of licensees in Categories I, II, III	Interval between inspections may vary by $\pm$ 25%
Inspection of licensees in Categories IV, and V	Interval between inspections may vary by $\pm$ 50% of inspection interval length.

If escalated enforcement action has taken place, an inspection may be conducted within one year following closeout of the escalated enforcement action.

a. The inspection frequency assigned to a licensee is based on the potential hazard of the licensee's programs. For example, a license with an inspection frequency of one year is one in which there is the greatest potential for hazards in health and safety; this priority requires the most frequent inspections because of the nature of the operations. On the other hand, an inspection frequency of 5 years involves little potential hazard to health and safety and requires less frequent inspection.

b. The inspection priority assigned to a license or registration is numerically the same as the inspection frequency in years. For example, a license assigned an inspection frequency of 5 years is an inspection priority V license.

c. When a new license is issued, it shall be assigned an initial inspection priority and scheduled for an initial inspection. If a license involves more than one type of use, the type associated with the most frequent inspection shall establish the inspection priority.

d. The interval between inspections may be extended (increased) beyond that specified by the priority system on the basis of good licensee performance. The main consideration in extending inspection intervals should be evidence of a well-managed and effective radiation safety program that shows a history of compliance. Specifically, the inspection frequency may be extended, for licensees meeting the following conditions:

   1. the violations identified during the licensee's current and preceding inspections are Severity Level IV; and

   2. the licensee has not had a significant program change since the preceding inspection. Significant program changes should relate to changes in the scope or type of operations, changes in the authorized materials or possession limits, changes in key personnel, or changes in locations of use. (NOTE: Extension should not be considered for licensees who have undergone significant program changes, to ensure that the licensee can maintain adequate performance over the next inspection period.)

3.07 Extension of Interval

Licensees that meet the above criteria may have their inspection interval extended as follows:

Priority I	increased up to 2 years
Priority II	increased up to 3 years
Priority III	increased up to 5 years
Priority IV	increased up to 6 years

For instance, a radiographer (priority I) who meets the above criteria may have his/her next inspection due date lengthened to 2 years from the last inspection. A portable gauge licensee (priority III) that meets the above criteria may have its next inspection due date lengthened to 5 years from the last inspection (rather than 3). The extension shall be valid only until the next inspection, but may be renewed on the basis of repeated favorable findings.

a.. The designated inspection priority for these licensees should not be changed in the Division database. However, the inspector is responsible for initiating the change in the "next inspection date" field on the inspection field form. To identify the extended inspection date in the Division database, the data entry person shall use the "next inspection date" from the inspection field form and enter this date in the database.

b. To document the extension in the interval between inspections, a brief note (e.g., on the inspection form cover sheet) should be written by the inspector, approved and signed by the inspector's immediate supervisor, and placed in the licensing file.

c. The decision to extend the inspection should be made immediately after each routine inspection.

3.08 Reduction of Inspection Frequency

The interval between inspections may be reduced (shortened) and inspections conducted more frequently than specified in the priority system on the basis of poor licensee performance. The main consideration in reducing the inspection interval should be evidence of moderate to severe problems in the licensee's radiation safety program. Poor compliance history is one indicator of such problems. Lack of management involvement or control over the radiation safety program is another indicator. Specifically, licensees that meet the following conditions should be considered for reduction in inspection interval:

a.. a Severity Level I, II, or III violation on the most recent inspection, or
b. issuance of an Order or escalated enforcement on the most recent inspection, or

c. if a "management paragraph" appears, in the cover letter transmitting the

notice of violation on the most recent inspection (i.e., a paragraph that requires the licensee to address adequate management control over the licensed program), or

d. repetitive violations.

The above list is not exhaustive; the inspection frequency can and should be reduced for any other reason deemed pertinent by the Section Manager. An example would be an enforcement conference where the outcome did not include escalated enforcement action, but did indicate the need for the licensee to improve some aspect(s) of its compliance program.

Licensees that meet the above criteria may have their inspection interval reduced by any length. For instance, a priority IV licensee with a poor performance record could be rescheduled for its next inspection in 2 years, rather than 3. A priority I licensee with a Severity Level III violation could be rescheduled for its next inspection in 6 months. The reduction shall be valid only until the next inspection, but the Section Manager shall consider the results of the next inspection when determining whether the reduced frequency should be continued, changed, or returned to normal.

The designated inspection priority for these licensees should not be changed in the Division database. However, the "next inspection date" field in the database should be changed to contain the reduced date for the next inspection.

To document the reduction in the interval between inspections, a brief note (e.g., on the inspection form cover sheet) should be written by the inspector, approved and signed by the inspector's immediate supervisor, and placed in the licensee's file.

3.09 Telephonic Contacts and Inquiries

Some inquiries may be done by telephone using a questionnaire to determine the status of the activities of low priority licenses. This is limited to inspection category V and General licenses.

Some inquiries may be done by telephone to: (1) determine some facts about the licensed program such as reminding the licensee that its license is near expiration, (2) determine if there is sufficient activity to conduct an inspection (radioactive material may be in storage), or (3) determine if the licensee currently possesses radioactive material.

These are only examples. There may be other reasons to make telephonic

inquiries of licenses regarding license expiration, decommissioning, and so forth. Telephone inquiries generally do not involve direct inspection effort, whereas telephone contacts do. When considerable travel is required, inspectors may telephone licensees to verify that a routine inspection can be performed before undertaking such travel.

Notification that a license has expired or is being processed for termination will require prompt action to ensure that licensed material has been properly disposed of and areas wherein material was used can be safely released to unrestricted use. Final action, including inspection and confirmatory survey, if necessary, should be conducted as soon as possible. Telephone inquires will usually be necessary to initiate this process.

Procedures for using the telephonic contacts are included as Attachments.

a. Evaluation of Possession and Use of Radioactive Material, for use with inspection category IV And V Licensees only. (Attachment 2)

Follow- up Letter for Telephone Contact #1 (Attachment 3)

Follow-up Letter for Telephone Contact #2 (Attachment 4)

3.10 Inspection Activities Which do not Result in a Completed Inspection

The following sections outline conditions where it is considered that an inspection has not taken place.

a. Before scheduling an initial inspection, determine if the licensee possesses any radioactive material. An initial inspection should not be attempted if it is determined that the licensee does not possess licensed material. An inspection should not be considered to have been performed if, after arriving on an announced initial inspection, it is found that no radioactive material is possessed. Before attempting an initial inspection, the licensee should be contacted by telephone.

b. An inspection should not be considered to have been performed (1) if, after arriving on an unannounced inspection, it is found that no radioactive material is possessed or used because of disposal or storage of the material and no inspection activities are performed or (2) if the licensee or licensee's representatives are not available to assist with the inspection and the inspector is unable to perform inspection activities. On the other hand, if it is possible to inspect records or other items according to license conditions or DRC rules, such activities should be inspected and be recorded as an inspection whether the radiation safety officer (RSO) is present or not, including those licenses that have been terminated.

c. For any situation where an inspection was not performed as defined above, the inspector should not prepare a notification to the licensee and should not record the attempted inspection as "an inspection." However, a note should be placed in the licensee/registrant file to record the reason an inspection could not be performed and giving a date when the next inspection should be performed.

d. Telephone contacts are not inspections. Therefore, the results of these activities should not be recorded in a Notice of Violation.

3.11 Inspection of Waste Disposal Activities [See UCA 19-3-202(1)(b)]

In connection with all inspections of licensees who generate radioactive waste, the following information will be obtained:

1. Characteristics of waste stream (especially any mixed waste, i.e. physical form, volume, activity/nuclides, etc.).

2. Frequency of transfer to burial site.

3. Involvement of waste disposal brokers.

4. Type of waste packages or containers.

5. Identity of carrier who transports waste to burial site.

6. Volume reduction or "treatment" methods utilized at the facility.

4.00 SCHEDULING INSPECTIONS

4.01 Basis for Scheduling

An inspection may be completed earlier or later than scheduled for the purpose of the efficiency realized in inspector travel time. The efficiencies of travel time should be balanced against the basic purpose of the inspection priorities, that is, effective use of an inspector's time versus the potential hazards in a licensee's operation. A low-priority licensee should not be over inspected just because an inspector is in the area of the facility. Inspection of a high-priority licensee should not be unduly delayed merely for scheduling purposes.

4.02 Radiography Inspections

For licensees authorized to work at temporary jobsites, inspectors should plan to include an unannounced inspection of licensed activities at these locations, when possible, in addition to inspecting licensed activities at the licensee's principal place of business. During the inspection of the licensee's principal place of

business, the inspector should, through discussions with the licensee and review of licensed material utilization records, ascertain if the licensee is working at these temporary jobsite locations. To assist the inspector in locating these locations, the customer of the licensee may be contacted and the temporary jobsite inspection scheduled when the licensed activities are in progress. The licensee's customer should be requested not to notify the licensee of the inspection. If an unannounced inspection of these locations is not possible, then the inspector should attempt to arrange an announced inspection at temporary jobsites.

4.03 Combining Inspections

If a licensee holds more than one kind of license/registration (that is, of different license categories or a combination of licenses and registrations), a single inspection may be scheduled whenever practicable to aid in more effective use of inspector's time spent in travel status. In the determination to combine inspections on a continuing basis, consideration should be given to "over inspecting" a lower priority license versus the need and desirability of inspecting a licensee's total activities for a more complete picture of its safety and compliance performance. The priority designations of the lower priority license registrations shall not be changed in these cases; the more frequent inspections of lower priority license/registrations shall be handled only in the scheduling process.

4.04 Performance Indicators

Performance Indicators shall be used by inspectors (See Attachment 9) to determine if the licensee is conducting its operation in a way, that may, if not corrected or changed, lead to violations. There is no regulatory basis for most performance indicators, but there is a basis in sound radiation protection.

4.05 Inspection Before License Renewal

Before renewing a license in categories I, II, or III, the compliance inspection history of the licensee should be checked to determine whether additional requirements should be made a part of the license, particularly for those licensees that have a history of marginal performance. In some cases, it may require an on-site inspection to determine if the license should be renewed, based on prior performance and up-to-date information on the licensee.

4.06 Change in Priority Based on Change in Type of Program

A change to a lower or higher inspection frequency should be made when it is determined that the licensed activity being carried out warrants a lower or higher inspection frequency. Any changes from the usual priorities shall be authorized by the Section Manager and a note placed in the licensees/registrants file.

A reduction from a category IV frequency to a category V frequency may be done

if:

a. it is not likely that radiation workers will be exposed to airborne contaminants which exceed 10% of the airborne radioactive limits listed in R313-15-203

b. it is not likely that a radiation worker will exceed 25% of the radiation dose limits listed in R313-15-201 or will not need to use personnel monitoring devices

c. it is not likely that work with radioactive material will result in a spill causing spread of contamination

d. complex surveys are not required

e. waste disposal is not required

4.07 Inspection of General Licensees

Inspections of general licensees are to be performed once per five years. Inspections should also be made to resolve allegations, complaints, or other indications of an unsafe practice or a case of noncompliance, or when such an inspection is directly pertinent to an inspection involving a specific license. Any inspections conducted under these provisions should be done while other activities are being conducted in the same area of the State.

4.08 Inspections of Activities Under Reciprocity

Inspectors shall make every reasonable effort to conduct inspections of licensees working in the state under reciprocity at the same frequency as required by NRC. (See NRC Manual Chapter 1220, Appendix III, 9/8/97).

4.09 Construction and Preoperational Inspections of Irradiators

Construction and preoperational inspections of new walk-in or pool-type irradiator facilities shall be a regular part of the inspection program. The inspections will require the assistance of engineering inspectors and will require that the materials staff identify the parts of the facility that are especially important to safe operations of the irradiators.

4.10 Special Inspections

Special inspections are reactive in nature and cannot be scheduled on a routine basis. Occasions for which a special inspection should be performed include, but are not necessarily limited to the following:

1. Licensee report of an incident where onsite inspection is needed to

determine the facts of the case, the cause of the incident, and adequacy of the licensee actions to correct the cause of the incident, mitigate its consequences, and prevent recurrence. (See Allegations/Investigations, Sections 5.00 through 9.99)

2. Follow-up within 1 year of escalated enforcement to determine whether the licensee has taken the actions to which it committed itself in its response to an enforcement order. (See Follow-up Inspections, Sections 12.00 through 13.99)

3. Obtain information as to the validity and significance of an alleged unsafe operations. (See Allegations/Investigations, Sections 5.00 through 9.99)

ALLEGATIONS/INVESTIGATIONS
(Sections 5.00 to 9.99)

5.00 GENERAL OVERVIEW - ALLEGATIONS /INVESTIGATIONS

This document outlines the procedures used to evaluate and respond to complaints, allegations, and incident notifications and provides guidance on how to perform surveys necessary to evaluate the extent of a radioactive materials incident.

The following guidelines are used to determine whether an investigation is necessary when incidents or complaints are reported to the Division. Included in this section, in addition to the guidelines, are procedures to be followed when conducting an investigation and the materials needed for such an investigation.

6.00 INSPECTION REQUIREMENTS

Prior to conducting the inspection, the allegation will be reviewed by the Section Manager. The Section Manager will, with the concurrence of the Division Director, determine if the issues raised in the allegation warrant a physical investigation or other option, such as referring the matter to the licensee for resolution. The decision to devote a special inspection to the allegation or to review the issues during a routine inspection will generally be made at this time.

Allegations that appear to involve complex issues or significant safety, security, or confidentiality issues should be assigned to a senior inspector, if possible. Other allegations may be assigned to senior or non-senior inspectors, as appropriate.

Inspections to review and resolve allegations are to be conducted in a manner similar to that used for any inspection designed to review a limited aspect of the licensee's program. The inspector must not inform the licensee that the inspection is being conducted to review an allegation unless instructed to do so by the Section Manager or the Division

Director. The inspection should not focus too narrowly on the issues raised in the allegation, but should include the general area of the licensee's program within which the alleged activities occurred or failed to occur.

Matters of confidentiality are preferably settled prior to the inspection, and the inspector should clearly understand the alleger's confidentiality status and the alleger's feelings regarding the possibility of revealing his/her identity. The inspector should also be aware of procedures used to safeguard allegation documents, to communicate with the alleger and the licensee. Note however, that because of safety concerns or urgency dictated by other considerations, the Section Manager or Director may decide to send an inspector before confidentiality issues are resolved.

7.00 SPECIFIC GUIDANCE - Allegations/Investigations

7.01 Confidentiality

Allegers are granted confidentiality only in non-routine cases where it is deemed necessary for purposes of resolving the allegation. Nevertheless, the identity of the alleger should be protected as much as possible, even when confidentiality is not granted. Any information connected with the allegation should be provided to other persons, within or outside the Division of Radiation Control (DRC), only on a need-to-know basis. Files should be secured when not in use, and any documents that are released for general use should be redacted. Exceptions to the above are those cases in which it is clearly documented that the alleger has no objection to making his/her identity known, and releasing the alleger's identity would significantly facilitate review and resolution of the allegation.

7.02 Document Security

To help maintain anonymity, the inspector should avoid taking any documents that contain information that may reveal the nature of the inspection or the identity of the alleger, unless it is considered important to the conduct of the inspection. In addition, care should be taken to assure that documents about the allegation are protected from inadvertent disclosure. Documents related to an allegation in which confidentiality was formally granted must be kept in a secure file cabinet or safe, and access to such documents granted only on a need-to-know basis, as determined by the Division Director or Section Manager.

7.03 Origin of Concerns and "Off-the-Record" Statements

Should the licensee ask whether the inspection is being conducted in response to an allegation, the inspector should inform the licensee that the inspection includes a review of concerns which the DRC has with regard to the licensee's facility or operations. The inspector should decline to comment further on the origin of the concerns. The inspector should also remember that "off-the-record" Statements with licensee personnel are not acceptable. Any information provided, including

that which is considered by the informant to be "off-the-record", may be used by DRC in resolving the allegation or for any other purpose.

7.04 Instrumentation for Incident Investigation

Preparation for an incident investigation is similar to preparation for an inspection. The file must be carefully reviewed to determine the types and quantities of radioactive materials potentially involved and then all equipment deemed necessary for the investigation should be assembled. This equipment should be sufficient to ensure that the investigation is conducted safely and thoroughly.

7.05 Conducting an Incident Investigation

Each incident must be considered on an individual basis. After notifying the facility management upon arrival (if possible, and depending on the immediate steps needed to protect the public health and safety), the inspector should make a preliminary assessment of the situation at the incident site. The first consideration is to protect the employees and the public from any radiation hazard. Should a radiation hazard exist, assure that the area is secure and escalation of the hazard is not probable. If it is obvious that no radiation hazard has existed or does exist, documentation of this is still necessary.

7.06 Advisory Role of Inspector

After the immediate health and safety problems have been addressed, the inspector's role should be advisory only. The licensee, registrant, or local emergency response personnel is responsible for performing any corrective action. It is important to consider the consequences of all possible recovery operations in order to select the best solution with regard to the circumstances surrounding the hazard. When a course of action for recovery has been determined, monitor the procedures to ensure they are conducted within the ALARA concept.

7.07 Determination of Nature and Severity of Hazard

At this time, interview personnel involved to determine the nature and severity of the hazard and to determine possible corrective actions. These interviews should be performed as soon as possible to assure complete, independent, observations are obtained from all parties. Photocopies of pertinent records should also be acquired whenever possible. If the inspector suspects that criminal practices have occurred, the Section Manager must be contacted and arrangements made for law enforcement personnel to be notified.

Completion of an investigation involves the gathering of all pertinent information

not previously obtained. This may include review of records, interviews, surveys, samples, and calculations of exposures to individuals.

7.08 Preparing and Submitting an Incident Investigation Report

At the conclusion of an investigation, a thorough report shall be completed. Investigation reports are normally of the narrative form submitted as a memorandum to the license or registration file and the incident/investigation file. The usual format consists of a description of the complaint and identification of the persons interviewed and/or participating in the investigation. The body of the narrative can then be given chronologically as the inspector proceeded through the investigation. Interviews with individual may be set out by indenting and /or underlining so that the information and its source are readily identifiable.

The narrative of the report should end with the concluding remarks of the inspector which summarize the facts. Personal opinions should not be stated in the report. Apparent violations found should be listed (in the same format as inspection reports) at the end of the report. If you are unsure whether one or more of the apparent violations are valid, you can include a section indicating possible violations.

Attachments of records, photographs, surveys, and other items shall be identified as Attachment A, B, C, etc, and added to the end of the report. Be sure that the attachments are appropriately referenced in the body of the report. Photographs should be attached to a sheet of paper. Each photograph must be labeled (date, person taking photograph, description of item of interest in photography, etc.). Often, the investigation occurs in stages and it may be necessary to prepare a number of smaller reports in order to submit the reports in a timely fashion.

7.09 Staff Requirements for Responding to Incidents

Division staff responding to incidents are to:

1. Notify the Section Manager when radiation incidents occur. Indicate at the time of management notification, if the incident meets Abnormal Occurrence Criteria. (See Sections 7.15 and 9.02)

b. Provide written documentation of radiation incidents and submit these to the Section Manager for review.

c. Track radiation material incidents until they are closed.

d. Complete DRC "Event Report" (Attachment 5) or DRC Medical

Misadministration Report, (Attachment 8) (whichever is appropriate) when radioactive materials are the cause of an incident.

e. Place the completed report in the appropriate file folder located in the front of the Division's radioactive material licensee "A" file drawer. See that copies of the report are placed in all appropriate files such as radioactive material licensee, registrant, or reciprocity files.

7.10 Complaints or Allegations Response

Any allegation made by any individual or group, received in person by a Division inspector, either verbally or (preferably) in writing, and regarding a possible radiation hazard, is considered a complaint. The Division should respond to each complaint within a 72-hour period. The response may be sooner depending on the potential radiation hazard. Complaint notifications shall be immediately referred to the Section Manager, as previously indicated.

Individual staff members receiving a complaint should exercise extreme care in the following areas's in which inappropriate response may intimidate the alleger and/or unnecessarily amplify the complaint.

7.11 Answering Allegers Concerns

Trying to answer the allegers concerns; the alleger may view the prompt answers as an attempt to minimize his concerns and hold back or yield his concerns in a different context.

7.12 Verbalizing Your Concerns

Verbalizing your own concerns about the potential consequences of the allegation, if proven true; the alleger may encompass this speculation into a new allegation of his own.

7.13 Reportable Misadministration

The following guidelines are applicable when medical licensee staff ask if an incident is a reportable misadministration, or if an inspector discovers a set of circumstances that might be a reportable misadministration, and there are significant questions on the interpretation of reportability among the staff. (Includes events with greater than 30 microcuries I-131 and I-125)

a. In all cases, keep a detailed log to document all telephone inquiries and/or

discussions of the incident.

b. Obtain preliminary details describing the incident and potential misadministration and notify the Section Manager.

c. If the incident involves therapy, schedule a reactive inspection with the licensee within two weeks of the misadministration incident.

d. Most potential diagnostic misadministrations will not require an inspection. To obtain an accurate description of the event, a phone discussion with the principals involved in the incident will normally be sufficient.

e. During the inspection or phone discussions, interview the principals involved to develop an accurate time sequence and description of the event. Do not rely entirely on summary information provided by other licensee personnel such as radiation safety officer, administrative department head, or hospital director, if they are not directly involved with the incident.

f. Interviews should include questions on personnel involved with the incident, their training and experience, circumstances surrounding the incident, contributing factors, events leading to discovery, time sequence of actions and consequent decision, immediate and proposed follow-up and corrective actions.

g. Review and obtain copies of pertinent documents such as physician prescription or directive, description of the treatment plan, and changes made to the plan or prescription. Depending on the case, other documents may also provide valuable information, such as equipment calibration and service records and training records. Attach all pertinent documents to the incident report form.

h. After review by the section manager, place the "Medical Misadministration Follow-up Report" (with all pertinent documentation attached) in the appropriate file folder located in the front of the Division's radioactive material licensee "A" file drawer.

7.14 Specific Information of Allegers Concerns

It is imperative that the inspector obtain specific information about the allegers concerns. Statements that reflect only the inspectors feelings, such as "they are all messed up" or "I don't like the way they run things", should not be expressed by an inspector. Such statements reflect a bias which has no place or purpose in an investigation. When such statements are made by the alleger they should be recorded as a record of such bias. If the alleger makes no specific allegations

there is no basis for an investigation.

7.15 Specific Role of Section Manager/Alleger/Staff

If at all possible, the Section Manager should be the focal point of discussions between the Division staff and the alleger.

The Section Manager will evaluate the allegations and determine whether follow-up investigations will be conducted. As the follow-up investigation progresses, other allegations or concerns expressed by the alleger may be dropped from further review as ongoing efforts provide new perspective about the credibility of the alleger.

7.16 Provision of Allegation Summary

A written summary of the allegations should be provided to the alleger shortly after the interview along with a request that the alleger confirm whether the summary captures the scope of his concerns.

When the investigation results and Division or Department enforcement actions have become public, the alleger may be provided copies of the documents that describe the Department's review of the allegation, if so requested. In cases of protracted follow-up, periodic contact with the alleger should be maintained.

7.17 Preparing for a Complaint Investigation

Preparation for a complaint investigation may be very much the same as preparation for an inspection. If so, preparation procedures for incident investigations may be followed. However, some complaints do not involve a licensee or registrant and thus no file is available for review. If a complaint does not involve a licensee or registrant, possible actions to be taken and equipment needed for the investigation may be suggested by the Section Manager.

7.18 Conducting a Complaint Investigation

Each complaint must be considered on an individual basis. The inspector should make a preliminary assessment of the complaint to determine the equipment needed for the investigation. The investigation will involve the gathering of all pertinent information. This might include interviews, surveys, samples, reviews of past records, and calculations of exposures to individuals.

7.19 Preparing and Submitting a Complaint Investigation Report

At the conclusion of an investigation, a thorough report should be compiled in the same manner and format as for an incident investigation. A copy of the complaint report should be filed and a copy sent to the complainant, if the complainant has so requested.

7.20 Conducting Interviews

The following guidance provide direction that will help maximize the amount of pertinent information obtained during the interview, if followed.

a. Explain the purpose of the interview.

b. Try to put the person being interviewed at ease.

2. The interview should not be conducted as a confrontation between the inspector and the person being interviews.

Know in advance what questions to ask.

5. Prior to the interview, review the subject or subjects to be discussed in order to have as much information as possible.

6. Show the person being interviewed you are knowledgeable concerning the subject to be discussed.

7. Avoid asking questions that lead the person being interviewed to an answer you want to hear, or a simple yes or no answer.

7.21 Participating Parties at An Interview

a. A second Investigator should accompany the lead inspector during an interview. If the person being interviewed is to be at a place other than his/her place of employment, a second investigator should accompany the lead investigator.

7.22 Third parties may be present

If the individual being interviewed wishes to have a third party present at the interview, it is allowable. However, that person is not to interfere with the interview or to be allowed to ask or answer questions. If the interview is to be performed at the licensee's or registrant's place of business, a representative of management may be present if his presence would not compromise the interview

and the person being interviewed does not object. Again, this person should not interfere with the interview. The interview may be conducted at a location other than the licensee's facility.

7.23 Surveys

Surveys are performed to determine the presence of a radiation field and the amount of exposure a person would receive at a specific distance from a source of radiation. The Division has available count rate meters with various probes as well as ionization chamber instruments for inspectors. Many other more specialized instruments are available upon request. For all probes used with the count rate meter, readings are obtained in units of counts per minute. Readings obtained with the ionization chamber instrument are to be in units of milliroentgens per hour.

Prior to release of premises or equipment for unrestricted use, a comprehensive radiation survey shall be performed to establish that radiation and contamination levels are within the limits outlined in DRC Criteria. These surveys are normally performed by the licensee, but may be performed by Division personnel. If this survey is performed by Division representatives, a report shall include a floor plan or other sketch with sufficient detail to identify all the sampling points.

The instruments used for radiation surveys must be sufficiently sensitive to detect 0.24 mrem per hour if there may have been unsealed sources at the facility. Instruments used to measure for fixed contamination must have been calibrated in such a way that results may be obtained in units of dpm per 100 cm^2 or be sufficiently sensitive to demonstrate the absence of levels listed in Table I, form DRC-14, (Attachment 6). To survey for removable contamination, filter paper wipes are analyzed by Division staff and may be analyzed at the State Health Laboratory before a final determination is made.

7.24 Sampling Procedures

While sampling for contamination, it is important to insure that exposure is kept as low as reasonably achievable and that the sample is not cross-contaminated. It is also important to insure that proper documentation of the sample is maintained at all times. This documentation shall include the date and time, location, type of sample, area sampled, weather conditions, person performing the sampling, and any other information deemed appropriate by the inspector. The need for chain-of-custody records should be considered.

7.25 Sealed Source Leak Tests

For sealed source leak tests, the location and method of obtaining the sample depends on the source's strength and location. After determining the normal background reading for an area free of radioactive material, use a cotton-tipped applicator or filter paper and wipe the surface of the source or the surface of the device upon which one would expect contamination to accumulate. Be sure to wipe any welds, seams or breaks in the surface of the source. Do not touch the source with the hand. Use a pair of tongs or other device to handle the filter paper. Retire to the area where normal background was determined and, using a count rate meter with a NaI scintillation probe, or other appropriate detector, determine whether any detectable contamination is present on the wipe. Package the samples appropriately for analysis.

7.26 Soil, Air, Water & Vegetation Samples

Soil, air, water and vegetation samples must be representative of the general area being sampled. A sample typical of the area and free of contamination must be obtained to serve as a basis for determining concentrations of naturally occurring elements in the soil. This could normally be an area uphill from a spill of liquid and an area upwind from an airborne release of radioactive material. Samples for analysis should be obtained from areas with the highest readings detected with survey instruments. When examining the area for contamination from a spill, observe the normal pathways of water flow and any damp areas in the soil. For samples of soil contaminated by liquid releases, consideration must be given to the contour of the land surrounding the source of the release in order to choose correct locations for sampling. If the contamination is due to airborne releases, determine wind direction and velocity at time of release as an aid in locating areas to be sampled.

8.00 INCIDENTS REQUIRING PROMPT INVESTIGATION

8.01 Possible Overexposure

The licensee or registrant is required to report excessive exposures to the Division in accordance with the notification requirements set forth in R313-15-1202 "Notification of Incidents" and R313-32-33 "Notifications, Reports and Records of Misadministrations".

Although Utah Radiation Control Rules do not require licensees to notify the Division for all of the following types of incidents, a prompt physical investigation of the possibility of overexposure shall be conducted by Division representatives when any of the following conditions are known to exist:

a. An individual is believed to have received, in a period of 24 hours –

(1) A total effective dose equivalent exceeding 5 rems (0.05 Sv); or

(2) An eye dose equivalent exceeding 15 rems (0.15 Sv); or

(3) A shallow-dose equivalent to the skin or extremities, exceeding 50 rems (0.5 Sv); or

b. An industrial radiographer, an assistant radiographer, helper or supervisor received an exposure from a source disconnect, subsequent source recovery, or other episode which results in a pocket dosimeter (0-200 millirem) being discharged beyond its range. Assistant radiographers, helpers, and supervisors should not be involved in source recovery operations in any way that would result in such exposure.

c. A situation which could cause whole body exposures to members of the general public in excess of 100 millirem.

4. The failure of facilities or equipment which could lead to radiation exposure in excess of those listed in 8.01 a.1.

e. A bioassay sample in excess of limits specified in license condition. This is defined as an overexposure and is to be reported to the Division in accordance with the license provision.

f. A prompt physical investigation is not required when the requirements set forth in R313-32-33 "Notifications, Reports and Records of Misadministrations" have been complied with. If a member of the licensee's staff or other interested party requests assistance in determining if a medical misadministration has occurred or an inspector discovers evidence of an unreported misadministration, a prompt physical investigation is then necessary.

8.02 Potential Release or Discharge of Radioactive Materials

A release or discharge of radioactive material is defined as a level of radiation or concentration of radioactive material (not involving overexposure of any individual) in an unrestricted area in excess of applicable limits as set forth in the rules. The licensee or registrant shall report such a release or discharge of radioactive materials to the Division in accordance with notification requirements as set forth in R313-15-1203 "Reports of Exposures, Radiation Levels, and

Concentrations of Radioactive Material Exceeding the Constraints or Limits".

A prompt physical investigation of a release or discharge of radioactive material shall be conducted by Division representatives when any of the following conditions exist:

a. Release of radioactive material to an unrestricted area due to an accident, fire, tornado, earthquake, or other means causes or threatens to cause:

   1. Release of a quantity of Radioactive Material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR Part 20, 1997 ed;

   2. Access to the contamination area, by workers of the public, to restricted for more than twenty-four (24); or

   3. Medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

b. A transportation accident involving radioactive material occurs where:

   1. The radioactive material container or its contents may have been damaged resulting in leakage of the material or shifting of the shielding material; or

   2. The vehicle driver, passenger, or others are seriously injured or killed.

c. The failure of facilities or equipment which could lead to release of radioactive materials to unrestricted areas in excess of those specified in a.1..

8.03. Lost or Stolen Sources of Radiation

When a licensee or registrant does not have possession or control of a licensed or registered source of radiation due to loss or theft, prompt physical investigation of the loss or theft shall be conducted if so directed by the Section Manager. The licensee or registrant must report such theft or loss of any licensed or registered source of radiation in accordance with reporting requirements as set forth in R313-15-1201.

8.04 Other

A physical investigation may be conducted of an incident in which none of the previous criteria are exceeded but where the level of public concern dictates that a prompt investigation be conducted.

8.05 Cases Where Prompt or Delayed Inspections May be Necessary

The following examples summarize many incidents for which an investigation (prompt or delayed) may be necessary.

a. Excessive contamination or radiation levels on radioactive material packages or loss of package effectiveness, [R313-15-906(4)];

b. Theft or loss of radioactive material, [R313-15-1201];

c. Any event for which a report is required by R313-15-1202, "Notification of Incidents"; including any overexposures, excessive radiation levels, or releases of material to unrestricted areas, [R313-15-1203];

d. Any safety related failures of measuring, gauging, or controlling devices reported under R313-21-22(4)(c)(xii);

e. Any pharmaceutical misadministration, whether diagnostic or therapeutic, (R313-32-33);

f. Any transportation accident in which a radioactive material package has been damaged, 49 CFR Part 171.15 and 171.16];

Any major deficiency in design, construction, operation, or management control, with sufficient safety implications to require remedial action through modification or suspension of a license;

h. Recurring incidents, or incidents with implications for similar facilities, which are of major concern regarding safety; and

i. Events relating to current high visibility issues such as radioactive waste disposal.

9.00 ABNORMAL EVENTS

9.01 Reports of Abnormal Events to Other Agencies

After a completed incident or complaint investigation report has been submitted, along with analyses of any samples which had been taken, the Section Manager will review the documents to determine whether copies should be sent to other state or federal agencies for their information. During this evaluation the inspector should comply with the directions found in SA-300, Reporting Material Events, May 23, 2001.

Any report prepared as a result of notifications required by R313-15-1203 that meet the Abnormal Occurrence Criteria must be sent to the NRC. Copies of reports of incidents involving licensees of the NRC or another Agreement or Licensing State shall be sent to the appropriate agency. DRC Form Event Report, (Attachment 5) is to be utilized by Division staff to summarize radioactive material incident data. A summary or listing of radioactive materials incidents which have been reported to the NRC will be available through the Nuclear Materials Event Database.

Incidents involving high visibility and/or the possibility of unusual publicity need to be reported to NRC by telephone immediately. Examples include incidents involving: radioactive waste; major design, construction or operation deficiencies necessitating immediate remedial action; serious deficiencies in management or procedural controls; recurring incidents or incidents with implications for similar facilities, which imply a major safety concern.

9.02 Notification of Abnormal Events to Section Managers

Incidents involving the following may need to be reported to the Nuclear Regulatory Commission and should therefore be brought to the Section Managers immediate attention:

a. Excessive contamination or radiation levels on radioactive material packages or loss of package effectiveness, R313-15-906;

b.. Theft or loss of radioactive material, R313-15-1201;

c. Any event for which a report is required by R313-15-1203, "Notification of Incidents"; including any overexposures, excessive radiation levels, or releases of material to unrestricted areas, R313-15-1203

d. Any safety related failures of measuring, gauging, or controlling devices reported under R-313-21-22(4)(c)(xii);

e.. Any pharmaceutical misadministration, whether diagnostic or therapeutic, R313-32-33;

f. Any transportation accident in which a radioactive material package has been damaged, 49 CFR Part 171.15 and 171.16;

g. Any major deficiency in design, construction, operation, or management control, with sufficient safety implications to require remedial action through modification or suspension of a license;

Recurring incidents, or incidents with implications for similar facilities, which are of major concern regarding safety; and

Events relating to current high visibility issues such as radioactive waste disposal

CLOSEOUT INSPECTIONS AND CLOSEOUT SURVEYS
(Sections 10.00 through 11.99)

10.00 GENERAL OVERVIEW OF CLOSEOUT INSPECTIONS & SURVEYS

These instructions are used in conjunction with form DRC-14, (Attachment 6), which should be filled out by the licensee and returned to the Division at least 30 days prior to the planned date of abandonment and prior to the initiation of a close out inspection or close out survey. These instructions do not apply to facilities unable to meet the requirements of form DRC-14. The ownership of licensed facilities must be transferred to another licensee specifically licensed to posses the licensed radioactive material or the radioactive material must remain on a license possessed by the licensee. Licensed radioactive material must remain licensed unless action by the Utah Radiation Control Board authorizes otherwise. This is not intended to preclude the possibility of such things as razing buildings etc. and transferring the material in question to a duly authorized recipient.

Problems involving the contamination of soil are quite varied in nature and are not covered in this guidance, they must be dealt with on an individual basis. Facilities having the potential for soil contamination will usually have posted a bond to cover the cost of clean-up. The criteria for such clean up should have been, but is not always, included as a license condition.

11.00 INSPECTION REQUIREMENTS - CLOSEOUT INSPECTIONS

11.01 Closeout Review

a. The Division will review each proposed retirement of expired, superseded, or terminated license to determine the necessity of performing a closeout survey. The review will be on a case-by-case basis to determine the scope of the licensee's program and the potential for site contamination. The need or lack of need for a survey or inspection will be determined as follows:

b. Those facilities that meet any of the following criteria do not require a confirmatory survey:

1. An adequate closeout survey has been conducted by the licensee.

2. Use has been limited to small quantities of radionuclides with half-lives of 60 days or less.

3. Use has been limited to sealed sources only (if leak tests have been < 0.005 uCi).

4. Use has been limited to materials that pose a very low risk to public health and safety.

c. Those facilities that meet any of the following criteria do require a confirmatory survey:

1. Unsealed radionuclides with half-lives in excess of 60 days have been used and significant residual contamination is possible.

2. A significant safety issue has occurred (for example an enforcement conference and civil penalties during the course of the license).

3. Politically sensitive issues are involved, such as cases pending before a hearing board, or other technical issues that have been brought to the attention of the DRC by concerned citizens or elected public officials.

4. An adequate closeout survey has not been conducted by the licensee. (Prior to the initiation of a close out survey or close out inspection by the Division, the licensee should have submitted form DRC-14 for review. The Division will determine the need for a closeout survey upon review of this document.)

11.02 Licensee Obligations Prior to Closeout Inspection

Prior to initiating a closeout inspection, the inspector shall review the documentation submitted by the licensee with form DRC-14 to determine that the licensee has made a reasonable effort to eliminate residual contamination and is ready for a closeout inspection or survey. The inspector should at this time determine if a close out inspection is still necessary. Form DRC-14 contains adequate instruction to the licensee and if these instructions are followed, the inspector should have no difficulty in making these determinations. Form DRC-14 and the instructions are attached to this document for the readers review. (Attachment 6)

11.03. Confirmation of the Disposition of Materials

In addition to the review of form DRC-14, the inspector should confirm by inspection of records (inventory, transfer, disposal, etc.) that licensed material has been transferred to an authorized recipient.

Verify by inspection of the licensee's facility that licensed material and

radioactive/contaminated equipment, materials, scrap, etc. are not being used or stored. This should be done following receipt and evaluation of any reports of the facility's status that have been provided to the Division.

11.04 The Conduct of Confirmatory Surveys.

Determine by performing a survey that there is no residual radioactivity greater that the criteria in form DRC-14. This survey should include measurements for both fixed and removable contamination (as appropriate). If the potential for contamination exists outside the facility, environmental samples should be taken. (See NUREG CR-2082 Section 3.3 for Specific Survey Procedures and Section 4 regarding instrumentation needed and sampling procedures) This survey should include the following:

a. Buildings, rooms, furniture, systems and equipment; ventilation ducts, filters, sinks, drains, traps and sumps; overhead fixtures, walls and floors, etc., should all be considered as areas to be surveyed. The number of the confirming measurements made by the inspector will vary with the magnitude of the potential for contamination and the thoroughness of the licensee's survey.

b. The number and type of samples collected for analysis will depend on the determination that a potential exists for facility and environmental contamination and on other findings; i.e., the material involved, extent of area affected, nature of media involved, etc., and in the inspector's professional judgement.

3. "As appropriate" is determined on the basis of the potential for environmental contamination and in the inspectors professional judgment.

d. Radiation levels should be below those listed in form DRC-14, which should be used by the licensee during decontamination and or decommissioning. If levels exceed those listed, the licensee should demonstrate that reasonable efforts to decontaminate the facility do not result in an appreciable reduction in the radiation levels. If the radiation levels are greater than the accepted levels and the licensee had made a reasonable effort to decontaminate the facility, the Executive Secretary should be consulted in determining an acceptable radiation level for release of the facility.

11.05 Review of Reports and Records.

Verify by reviewing records and files that:

a.. Reports of personnel exposures for terminated employees or employees no longer working with radioactive materials required by R313-18-13 have been submitted to the employee.

b. Plans or arrangements have or have not been made for preserving records required by R313-15-1102 through 1110. Although certain licensees are not required to report personnel exposures, and the limitations of a license removes the legal obligation to maintain the records required by R313-15-1102 through 1110, the licensee should be informed that retention of these records is highly recommended.

11.06. Assessment of the Burial of Waste.

Determine if waste has been buried on the site. If burial has occurred, do the following:

a. Obtain information on the type and quantity of the materials buried. Also identify the following: radionuclides, type of packaging, specific location of burial, depth and spacing used for burial. Obtain information on the planned use of the area after the license is terminated.

b. Conduct a surface survey to determine the radiation levels at the burial site.

c. Submit the information acquired under a. and b. (above) to the Section Manager for assistance in determining the final action.

d. Radiation levels and geographical coordinates or other specific means of identification should be recorded on a map, diagram, photo, or other similar document. Information is required to determine whether long-term control of the area will be required.

11.07 Closeout Inspection Report

Prepare a final inspection report which summarizes the actions taken under this inspection procedure and the findings and evaluations for review by DRC staff and approval by the Executive Secretary. This report becomes the official certification of the disposal of licensed material and forms the basis for retiring and eventually disposing of both the licensing and inspection files.

FOLLOW-UP INSPECTIONS
(Section 12.00 through 13.99)

12.00 GENERAL OVERVIEW - FOLLOW UP INSPECTIONS

Follow-up inspections may be performed as a part of a routine inspection. If escalated enforcement action has taken place for a particular licensee, a follow-up inspection should be scheduled within six (6) months of the last inspection. The inspection should occur after completion of the escalated enforcement action. The objective of this inspection is to assess the licensee's follow-up actions in response to the previous violations.

This document outlines the means by which an inspector should ascertain that the licensee's response for items of noncompliance identified in a Notice of Violation (NOV) is in conformance with regulatory requirements, that the corrective measures were completed including the identification of root causes and addressing of general implications, and that the program procedures and practices have been appropriately strengthened to prevent recurrence. The determination of root causes of deficient management controls and their potential generic implications is the most important item in this inspection procedure.

13.00 FOLLOW-UP INSPECTION - REQUIREMENTS

13.01 Follow-up Inspection

Verify by a record review, observation, and discussions with licensee personnel the following information relating to follow-up on items of noncompliance:

a. That the licensee responded in a timely manner.

b. That the measures taken to correct the item and avoid further items of noncompliance were effected as described and within the time period specified in the reply. When repetitive items of noncompliance recur, the licensee should be requested to conduct an in depth analysis of the management control system to assure that all deficient management controls were corrected rather than just correcting the controls that were associated with the specific item. This entails the determination of root causes and potential generic implications.

c. That other licensee commitments discussed in the reply were also completed.

13.02 Identified Noncompliance Items

The following inspection requirements need not be completed for each noncompliance item, but may help to verify proper functioning of the licensee's administrative controls:

a. That licensee management forwarded copies of reply to appropriate personnel within the licensee's organization.

b. That responsibility has been assigned for effecting the described corrective action including effecting the identified changes in procedures and practices.

c. That the item(s) of noncompliance and identified corrective measures were reviewed as required by approved administrative procedures.

d. That the licensee posted copies of enforcement correspondence as required by R313-18-11 (required only for noncompliance items related to radiological working conditions).

e. That the licensee conducted audits of the inspection area in which violations were identified, noted deficiencies, and effective follow-up actions were initiated.

As part of a follow up inspection it might be necessary to evaluate the licensee and procedures that they have in place to correct problems and identify potential areas of non-compliance. (Sections 14.00 through 15.99 addresses this inspection activity).

ASSESSMENT OF LICENSEE PERFORMANCE
(Section 14.00 through 15.99)

14.00 GENERAL OVERVIEW

This document outlines the procedures to evaluate the effectiveness of licensee controls in identifying, resolving, and preventing issues that degrade the quality of operations or safety. Procedures are used to evaluate performance information from the previous 12-24 months.

15.00 INSPECTION REQUIREMENTS

15.01 Inspection Preparation

a. Review the strengths and weaknesses of licensee controls.

b. Review the results of licensee self-assessments, placing special emphasis on the conclusions and corrective actions.

c. Review performance reviews, enforcement history, performance indicators, and licensee operating activities, to determine any current areas of strengths or weaknesses.

NOTE: Use of Performance Evaluation Factors (PEF'S) Form dated 4/98 may be used by the inspector to assist in performing the inspection. Attachment 9.

15.02 Licensees Resolution of Problems

a. Select a sample of issues or problems from the list below for detailed analysis to assess the licensee's ability to identify and correct problems.

1. Operational events, testing, or maintenance activities (such as temporary repairs or troubleshooting activities).

2. Deficiencies or modifications requiring safety evaluations or operability determinations.

3. Procedural adherence deficiencies and procedure change backlog.

4. QA audits and self-assessments.

5. Repetitive equipment deficiencies.

6. Other events or issues that may indicate weaknesses.

b. Analyze in detail the problems selected above to determine the licensee's effectiveness in performing the following:

Initial identification and characterization of the problem.

2. Elevation of problems to proper level of management for resolution (internal communications and procedures).

3. Root-cause analysis.

4. Disposition of any operability/reportability issues.

5. Implementation of corrective actions including evaluation of repetitive conditions.

6. Expansion of the scope of corrective actions to include applicable related systems, equipment, procedures, and personnel actions.

c. Identify any strengths and determine the root causes of any weaknesses or slow response identified during the detailed analysis above. Possible root causes might include understaffing, lack of training, lack of funding, lack of accountability, unclear responsibility, procedure inadequacy, undue schedule pressure, or inaccuracy in design-basis documents.

15.03 Corrective Action Programs

a. Review the deficiencies tracked in the licensee's corrective action programs, including the evaluation of deferred items, or interim resolutions.

b. Review the results of licensee audits that evaluated the effectiveness of the associated corrective action programs.

c. Interview selected individuals involved with the licensee's problem identification process to determine the extent of the individual's understanding of the process and willingness to report problems.

d. Evaluate the licensee's corrective action programs to verify that the licensee is appropriately identifying significant issues and implementing timely corrective actions which achieve lasting results. Determine the adequacy of root-cause analyses.

15.04 Operating Experience Feedback

a. Evaluate the adequacy of the licensee's programs that implement operational experience feedback. Focus on the licensee's effectiveness to assess, to inform appropriate personnel of the results, and to initiate corrective actions for information obtained both within and outside the licensee's organization. Consider operational experience information reports as sources of information:

b. Identify any strengths or contributing conditions which reflect a lack of responsiveness in licensee programs that implement operational experience feedback.

15.05 Self-Assessment Activities

Evaluate the effectiveness of the licensee's self-assessment capability by reviewing self-assessment reports, audits, and evaluations.

Evaluate the significance of self-assessment findings to determine the effectiveness of the self-assessment effort. If relatively few significant findings are identified, review the scope of the self-assessment and the qualification of the licensee's staff involved in the self assessment. Determine if the self-assessment findings are consistent with previous inspection findings, plant performance, and third-party audits.

b. Determine if the licensee is aggressive in following up on self-assessment findings and determine whether the licensee's corrective actions are adequate, timely, and properly prioritized. Determine if individuals at all levels in the self-assessment and corrective action process are held sufficiently accountable to ensure that corrective actions are technically adequate and timely. Determine if the licensee has a meaningful trending program with sufficient information available for identifying recurring problems.

c. Interview selected individuals involved with the oversight function, to gain their insight on the effectiveness of their effort and the responsiveness of management and staff to issues raised.

ATTACHMENT

1

RADIOACTIVE MATERIAL LICENSE INSPECTION PROGRAM

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
22120 (SNM Pu -Sealed Neutron Source <200g) 22140 (SNM Pu - Sealed Sources in Devices)	1-a	SNM - Sealed Sources in Devices	6 month	III		5 5	1
22110 (SNM Pu - Unsealed < Critical Mass) 22111 (SNM U-235 and/or U-233 - Unsealed < Critical Mass)	1-b	SNM <15 grams for Research and Development	6 month	II		2 2	
22150 (SNM Pu - Sealed Sources < Critical Mass) 22151 SNM U-235 and/or U-233 - Sealed Sources < Critical Mass)	1-c	SNM - All Others	6 month	III		5 5	
No NRC Equivalent	1-d	SNM - Calibration & Reference Sources	6 month	III		N/A	

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
11300 (Source Material - Other > 150 kg, includes munition production, subcritical assembly, and other)	2-a	Source Material	6 month	II		3	
11210 (Source Material - Shielding)	2-b	Shielding	6 month	V		7	
11200 (Source Material - Other < 150 kg) 11700 (Rare-Earth - extraction and processing)	2-c	Source Material - Other (< 150 kg)	6 month	III		5 3	1

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03211 (Manufacturing & Distribution - Type A Broad)	3-ai.1	Manufacturing for Commercial Distribution (Type A Broad)	6 month	I		1	
03212 (Manufacturing & Distribution - Type B Broad)	3-ai.2	Manufacturing for Commercial Distribution (Type B Broad)	6 month	II		3	
03213 (Manufacturing & Distribution - Type C Broad)	3-ai.3	Manufacturing for Commercial Distribution (Type C Broad)	6 month	III		5	
03214 (Manufacturing & Distribution - Other)	3-aii	Manufacturing for Commercial Distribution (Other)	6 month	I		3	1
02500 (Nuclear Pharmacies)	3-b.1	Nuclear Pharmacies	6 month	I		1	2

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
02511 (Medical Product Distribution - 32.72, prepared radio-pharmaceuticals)	3-b.2	Processing, Manufacturing, and Distribution (Prepared Radiopharmaceuticals)	6 month	II		3	
02513 (Medical Product Distribution - 32.74, Sources and Devices, therapy sources, calibration and reference sources)	3-b.3	Processing, Manufacturing, and Distribution (Sources and Devices)	6 month	II		3	
No NRC Equivalent	3-c	Distribution or Redistribution of Radiopharmaceuticals (See R313-70)		II			1
03310 (Industrial Radiography - Fixed)	3-d.1	Industrial Radiography (Fixed)	6 month	I		1	4
03320 (Industrial Radiography - Temporary Jobsites)	3-d.2	Industrial Radiography (Temporary Jobsites)	6 month	I		1	3

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
No NRC Equivalent	3-d.3	Industrial Radiography (Both Fixed and Temporary Jobsites)	6 month	I			4
03510 (Irradiators - Self-Shielded, <10,000 Ci, includes blood irradiators) 03520 (Irradiators - Self-Shielded, >10,000 Ci)	3-e	Irradiators (Self-Shielded)	6 month	III		5 3	2
03511 (Irradiators Other < 10,000 Ci - panoramic, includes converted teletherapy units)	3-fi	Irradiators (< 10,000 Ci Exposed)	6 month	I		3	
03521 (Irradiators - Other >10,000 Ci)	3-fii	Irradiators (> 10,000 Ci Exposed)	Prelicense & 6 month	I		1	1

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03254 (Exempt Distribution - 32.22, self-luminous products) 03255 (Exempt Distribution - 32.26, smoke detectors)	3-g	Distribution to Exempt (items or quantities that require device evaluation)	6 month	III		5 5	

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03250 (Exempt Distribution - 32.11, exempt concentrations; includes broad)	3-h	Distribution to Exempt (items or quantities that require no device evaluation)	6 month	III		5	
03251 (Exempt Distribution - 32.14; H-3, Pm-147, and other isotopes in 10 CFR 30.15)						5	
03252 (Exempt Distribution, Resins - 32.17; Sc-46 resins)						5	
03253 (Exempt Distribution - 32.18 Small Quantities, byproduct material in processed chemicals, elements, compounds, mixtures, tissue samples, etc.)						5	

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03240 (General License Distribution - 32.51, generally licensed gauges, other)	3-i	Distribution to General Licensee (items or quantities that require device evaluation)	6 month	III		5	
03241 (General License Distribution - 32.53, H-3, Pm-147 signs or markers)						5	
03242 (General License Distribution - 32.57, Am-241 calibration sources)						5	
03243 (General License Distribution - 32.61, Sr-90 ice detection)						5	
11230 (Source Material - General License Distribution - 10 CFR 40.34)						5	

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03244 (General License Distribution - 32.71, In-Vitro Kits)	3-j	Distribution to General License (items or quantities that require no device evaluation)	6 month	III		5	
03620 (Research and Development - Other)	3-k.0	Research and Development - Other	6 month	II		5	9
03610 (Research and Development - Type A Broad, committee-approved users)	3-k.1	Research and Development - Type A Broad	6 month	II		2	
03611 (Research and Development - Type B Broad, RSO-approved users)	3-k.2	Research and Development - Type B Broad	6 month	II		3	

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03612 (Research and Development - Type C Broad, named users)	3-k.3	Research and Development - Type C Broad	6 month	II		5	
03613 (Research and Development - Broad, multisite-multiregional)	3-k.4	Research & Development, Broad (multisite)	6 month	II		1	
03124 (Measuring Systems - Other)	3-l.0	All Others	6 month	III		7	2
03121 (Measuring Systems - Portable Gauges, including Industrial Lixiscope)	3-l.1	Portable Gauges	6 month	III		5	91
03120 (Measuring Systems - Fixed Gauges)	3-l.2	Fixed Gauges	6 month	IV		5	19
03122 (Measuring Systems - Analytical Instruments)	3-l.3	Analytical Instruments	6 month	IV		7	10

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03123 (Measuring Systems - Gas Chromatographs)	3-l.4	Gas Chromatographs	6 month	V		7	2
02410 (In-Vitro Testing Laboratories)	3-l.5	In-Vitro Testing Laboratories	6 month	IV		5	3
02400 (Veterinary Nonhuman)	3-l.6	Veterinary Nonhuman	6 month	III		5	
No NRC Equivalent	3-l.7	Source Storage	6 month	III			3
No NRC Equivalent	3-l.8	Redistribution	6 month	III			2
No NRC Equivalent	3-l.9	Radiological Assay	6 month	II			4
01100 (Academic Type A Broad, Committee-approved users)	3-m.1	Academic Type A Broad	6 month	II		2	1
01110 (Academic Type B Broad, RSO-approved users)	3-m.2	Academic Type B Broad	6 month	II		3	1
01120 (Academic Type C Broad, named users)	3-m.3	Academic Type C Broad	6 month	III		5	1

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
No NRC Equivalent	3-m.4	Academic/Medical Broad Scope	6 month	I			1
03225 (Other Services, includes teletherapy, irradiator, and gauge services)	3-n.1	Service Licenses (Gauge)	6 month	III		3	
03221 (Instrument Calibration Services Only, Self-Shielded) 03222 (Instrument Calibration Services Only - Other)	3-n.2	Instrument Calibration (<100 Ci)	6 month	IV		5 3	1
No NRC Equivalent	3-n.3	Instrument Calibration (>100 Ci) and Leak Testing	6 month	III			1
03219 (Decontamination Services)	3-n.4	Decontamination/ Decommissioning	6 month	II		2	3
03220 (Leak Test Services Only)	3-o	Leak Testing Only	6 month	V		7	

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03231 (Waste Disposal - Burial)	4-a	Waste Disposal	6 month	I		1	1
03234 (Waste Disposal Service - Processing and/or Repackaging)	4-b	Repackaging Waste	6 month	I		1	1
03232 (Waste Disposal Service - Prepackaged Only)	4-c	Receipt of Prepackaged Waste	6 month	II		2	
No NRC Equivalent	4-d	On Site Radioactive Waste Packaging	6 month	III			
03110 (Well Logging - Byproduct and/or SNM, Tracer and Sealed Sources) 03111 (Well Logging - Byproduct and/or SNM, Sealed Sources Only) 03112 (Well Logging- Byproduct Only, Tracers Only)	5-a	Well Logging (No Field Flood)	6 month	II		3 3 3	7

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03113 (Field Flooding Studies)	5-b	Well Logging (Field Flood)	6 month	II		3	
03218 (Nuclear Laundry)	6-a	Nuclear Laundry	6 month	II		2	
02300 (Teletherapy - human use only)	7-a	Teletherapy	6 month	I		3	
02120 (Medical Institution, Hospitals, Clinics - QMP required) 02121 (Medical Institution - no QMP required)	7-b.1	Medical Institution Limited	6 month	III		3 5	27
02200 (Medical Private Practice - QMP required) 02201 (Medical Private Practice - no QMP required) Broad)	7-b.2	Medical Private Practice	6 month	III		3 5	1

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
02210 (Eye Applicators Strontium-90, hospitals or physicians' offices)	7-b.3	Strontium-90 Eye Applicator	6 month	IV		3	
22160 (Pacemaker Byproduct, and/or SNM - Medical Institution 22161 (Pacemaker Byproduct, and/or SNM - Individual)	7-b.4	Medical (Pacemaker)	6 month	IV		7 7	1
02220 (Mobile Nuclear Medicine Service)	7-b.5	Medical (Mobile)	6 month	II		2	
02110 (Medical Institution Broad, hospitals only)	7-c	Medical Institution Broad	6 month	I		1	1

NRC PROGRAM CODE	LIC. CAT. NO.	LICENSE CATEGORY TITLE	CUR. INSPEC. FREQ.(I)	CUR. PRIOR. & INSPEC. FREQ (R)	CHANGE IN PRIOR.	NRC PRIOR.	UTAH LIC. NO.
03710 (Civil Defense)	8-a	Civil Defense	6 month	IV		5	1
22130 (Power Sources with Byproduct and/or SNM	10-a	Power Source	6 month	III		.7	

ATTACHMENT 2

TELEPHONE

EVALUATION OF POSSESSION AND USE OF RADIOACTIVE MATERIAL

(For use with inspection category IV and V Licenses only)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 7, 1998

ALL AGREEMENT STATES
OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-98-040)

Your attention is invited to the enclosed correspondence which contains:

INCIDENT AND EVENT INFORMATION..... XX *GUIDANCE FOR REPORTING MATERIAL EVENTS*

PROGRAM MANAGEMENT INFORMATION....

TRAINING COURSE INFORMATION.....

TECHNICAL INFORMATION.....

OTHER INFORMATION.....

Supplementary information: Enclosed is Office of State Programs (OSP) Procedure SA-300, Reporting Material Events, and it's Appendix, a revised "Handbook on Nuclear Material Reporting in the Agreement States." The "Handbook" is a final version of the handbook previously provided to you for use and comment by OSP in March 1995 (SP-95-036). The procedure and handbook provide guidance for Agreement State reporting of material events to the NRC. SA-300 and the "Handbook" contain procedures for providing NRC:

(1) Initial notification of the occurrence of a significant or routine event involving nuclear material (Section 1.0, of the "Handbook," pp.1-3).

(2) Pertinent follow-up information (results of any evaluations or investigations, dose assessments, leak tests, equipment assessments, inspection reports, corrective actions, etc.); and any additional information on technical or regulatory action through resolution and close out of the event (Sections 1.3 and 1.4, pp. 4-6).

(3) Guidance on electronic reporting of event information to the "Nuclear Materials Events Database" (NMED) and on written (hard copy) reporting through submission of Agreement State licensee event reports to the Director, OSP (Sections 1.3 and 1.4, pp. 4-6).

Guidance covering recent revisions to Title 18 of the Criminal Code, that expands the role of the Federal Bureau of Investigations (FBI) in the criminal use of radioactive material, and guidance on Agreement State notification to the FBI regarding specific categories of material events is contained in All Agreement States Letter SP-98-038. An Errata Sheet is also enclosed which adds the FBI guidance to the Reference Manual Section of the "Handbook."

For purposes of compatibility, the reporting of incidents and events involving the use of nuclear material by an Agreement State to NRC is now mandatory under the Policy Statement on Adequacy and Compatibility of Agreement State Programs approved by the Commission on June 30, 1997. The quality, thoroughness, and timeliness of material event reporting by the Agreement States to NRC, including Agreement State event information contained in NMED, will be reviewed during the annual meetings with Agreement States between the Integrated Materials Performance Evaluation Program (IMPEP) reviews, and will be evaluated during IMPEP reviews under the Common Performance Indicator, Response to Incidents and Allegations. We hope the enclosed procedure and handbook will be of assistance to you and your staff in the reporting of event information and will help in maintaining a national database of NRC and Agreement State information.

Information requested in the Handbook has been approved by OMB 3130-0178, expiration date June 30, 2000. If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: Patricia M. Larkins
TELEPHONE: (301) 415-2309
FAX: (301) 415-3502
INTERNET: PML@NRC.GOV

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosures:
As stated

Attachment 2
Instructions

IV and V Licenses Telephone Contact Procedures for Inspection Category

In the event a backlog of scheduled inspections has occurred, or it appears a backlog will occur, the inspector has the option, with the Section Managers approval, of exempting inspection category IV and V licenses from routine inspection by the DRC.

Information regarding radioactive material registration under a General License may also be obtained in a similar manner.

1. Select licensee to interview from the computer listing of licenses needing inspections. Select only licensees that have had initial inspections.

2. Pull the license/or registration file and review the file to determine the person to contact for information needed to complete interview questionnaire (Enclosure 2).

3. Telephone licensee/registrant and complete questionnaire (see following page). Note that not all licenses require each procedure mentioned in the questionnaire.

4. If the licensee reports any problems, namely:

   a. personnel exposures in excess of 1.25 rems for a calendar quarter
   b. lost licensed material
   c. leak tests indicating source leakage or
   d. any event the licensee/registrant considered unusual

   The person filling in the questionnaire should promptly notify the Section Manager. Provide the Section Manager with the appropriate draft letter, (Attachment 3).

5. If the licensee responses confirm no problems are present, prepare the appropriate draft transmittal letter (Attachment 4).

6. Send appropriate letter to Licensee/registrant after it has been reviewed by a member of the appropriate section.

ATTACHMENT 2
FORM

TELEPHONE

EVALUATION OF POSSESSION AND USE OF RADIOACTIVE MATERIAL

(For use with inspection category IV and V Licenses only)

Name: _____License Number _____
Address: _____Phone Number: _____
_____
_____

Name and Title of person responsible for radiation safety program: _____
_____

Describe how this material is used: _____
_____
_____

Described how you safeguard the byproduct material from use by unauthorized personnel:
_____
_____

Describe how you safeguard the material from loss or theft: _____
_____
_____

Describe controls which prevent individuals who work in the area around the material becoming exposed to radiation: _____
_____
_____

Do you have a personal monitoring program for your employees such as film badges, dosimeters:
Yes ___ No ___

If yes, were there any exposures to individuals in excess of 1.25 rems for any calendar quarter for the year(s) _____?

Yes _____ No _____

Do you perform surveys to detect external radiation in the area around the radioactive material?
Yes___ No ___

If yes, how often are the surveys performed? _____

_____

What instruments is used to perform the surveys? _____

_____

When was this instrument last calibrated? _____

On what date was the last physical inventory of all radioactive material in your possession performed? _____

Do you perform leak tests on the sealed source? Yes ___ No ___

If yes, how often are these leak tests performed? _____

Who evaluates the leak test results? _____

If no, describe the provisions you have made to have the leak tests done:

_____

_____

Describe your provisions for repair and maintenance of your device or source holder: _____

_____

_____

Describe any unusual events involving the radioactive material, radiation machines or devices. ___

_____

_____

_____

Name of person filling in questionnaire: _____

Title: _____

Date: _____

ATTACHMENT

3

Follow-up Letter for Telephone Contact #1

ATTACHMENT 3

Follow-up Letter for Telephone Contact #1

License No. _____

_____
_____
_____
_____

Gentlemen:

This refers to a telephone contact conducted on _____, 19 _.

The contact was an examination of activities conducted under your license registration as they relate to radiation safety and to compliance of the Utah State Radiation Control rules and with the conditions of your license registration. The contact consisted of discussions with _____ _____.

As a result of this examination of activities, the following concerns were noted and are specified below. These may be evaluated at an on site inspection at your facility in the near future.

As you described on the telephone, the following apparent regulatory concerns were identified.

(examples)

1. failure to leak test sealed sources at the required intervals

2. an exposure of _____ rems to an individual during the third quarter of _____*

3. an apparently lost gauge containing _____ curies of _____*

*(If apparently serious enough [such as overexposure], add the following)

You should examine your license and Utah State Radiation Control Rules to determine how you can correct the apparent regulatory concerns that you discussed on the telephone. In addition, we would like to highlight the following items that licensees should pay particular attention to as follows:

a. maintaining awareness and control of licensed material

Facility Name

b. proper transfers and disposal of radioactive sources

c. promptly reporting losses or thefts of licensed materials

If you have any questions regarding this contact, you may contact us at _____
_____.

Sincerely,

ATTACHMENT

4

FOLLOW UP LETTER FOR TELEPHONE CONTACT #2

ATTACHMENT 4

FOLLOW UP LETTER FOR TELEPHONE CONTACT #2

License No. _____

_____
_____
_____
_____

Gentlemen:

This refers to a telephone contact conducted on _____ , 19 _.

The contact was an examination of activities conducted under your license registration as they relate to radiation safety and to compliance of the rules and with the conditions of your license registration. The contact consisted of discussions with _____.

No regulatory concerns were identified.

If you have any questions regarding this contact, you may contact us at 536-4250

Sincerely,

ATTACHMENT

5

DRC INCIDENT REPORT

Attachment 5
DRC-INCIDENT

UTAH STATE
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF RADIATION CONTROL
INCIDENT REPORT

DATE: _____

INCIDENT NO: UT_____

LICENSEE: _____ LICENSE NO: _____

CITY: _____ CONTACT: _____

EVENT INVOLVED:

[ ] Loss of package effectiveness or contamination
[ ] Theft or loss of RAM
[ ] Overexposure of individual
[ ] Excessive levels of radiation or
[ ] Therapeutic concentrations of RAM
[ ] Transportation
[ ] Device safety failure
[ ] Possible generic [ ] GL
[ ] Leaking source
[ ] Misadministration
[ ] Diagnostic
[ ] Uranium mill occurrence
[ ] Other _____

DATE OF EVENT: _____ DATE REPORTED TO DIVISION _____

BRIEF DESCRIPTION OF EVENT:

_____
_____
_____

ISOTOPE: _____ AMOUNT: _____

OTHER UTAH OR OUT-OF-STATE LICENSEES INVOLVED:

LICENSEE: _____ LICENSE NO: _____
JURISDICTION: _____ RECIPROCITY LICENSEE? Y/N _____
CORRECTIVE ACTIONS TAKEN BY LICENSEE:

Corrective Actions (Continued)

_____
_____
_____

EVENT REPORTED BY PHONE or IMMEDIATE CORRESPONDENCE WITH:

[ ] *NRC WHO? _____ DATE: _____ BY: _____

[ ] LAW ENFORCEMENT: WHO? _____ DATE: _____ BY: _____

[ ] OTHER AGREEMENT STATES: WHO? _____ DATE: _____ BY: _____

[ ] OTHER LICENSES WHO? _____ DATE: _____ BY: _____

[ ] MEDIA: WHO? _____ DATE: _____ BY: _____

OTHER ACTIONS TAKEN:

_____
_____
_____
_____

CLOSEOUT SUMMARY:

DATE CLOSED: _____ REPORTED CLOSED BY _____

SUMMARY OF CLOSEOUT:

_____
_____
_____
_____
_____

*Only incidents involving high visibility and/or the possibility of unusual publicity need to be reported to NRC immediately. Examples include incidents involving: Radioactive Waste; Major design, construction or operation deficiencies necessitating immediate remedial action; Serious deficiencies in management or procedural controls; Recurring incidents which imply a major safety concern.

ATTACHMENT

6

DRC- FORM 14

UTAH DIVISION OF RADIATION CONTROL
CERTIFICATE - TERMINATION AND DISPOSITION OF RADIOACTIVE MATERIAL

INSTRUCTIONS:

Submit this form to: Utah Division of Radiation Control, Department of Environmental Quality, P.O. Box 144850, Salt Lake City, Utah 84114-4850. Please place an X or N/A (Not applicable) in the space preceding each number.

LICENSEE	3. License Number
1. Name	
2. Address	4. Expiration Date

CERTIFICATE

_____ 1. All use of radioactive materials authorized under the above-referenced license has been terminated.

_____ 2. Any radioactive contamination resulting from use of materials possessed under the authorization granted by the above-referenced license has been accounted for as follows (choose applicable answer):

_____ a. No possibility of contamination exists. A survey does not need to be performed to determine the presence of contamination. A brief explanation justifying this conclusion is attached.

_____ b. Radioactive contamination has been removed to the extent practicable. Attached are the reports and information specified in R313-22-36(4)(a)(iv) and (v).

_____ 3. All sealed sources containing licensed material, possessed under the above-referenced license, other than Hydrogen-3, with a half-life greater than 30 days and in a form other than gas were tested for contamination and/or leakage within six months prior to transfer and were transferred to an individual specifically licensed to possess them.

_____ 4. All radioactive material previously procured and/or possessed under the authorization granted by the above-referenced license has been disposed of as follows:

_____ a. Transferred in accordance with R313-19-41 to (Name and Address)

_____

which is authorized to possess such material under License Number _____

Issued by (Licensing Agency): _____

UTAH DIVISION OF RADIATION CONTROL
CERTIFICATE - TERMINATION AND
DISPOSITION OF RADIOACTIVE MATERIAL

____ b. Decayed, surveyed, and disposed of as non-radioactive trash.

____ c. Other (attach additional pages).

____ 5. No radioactive material has ever been procured and/or possessed by the licensee under the authorization granted by the above-referenced license.

____ 6. Additional remarks (attached additional pages).

The undersigned, on behalf of the licensee, hereby certifies that licensed quantities of radioactive material under the jurisdiction of the Division of Radiation Control are not possessed by the licensee. It is requested that the above-referenced license be terminated.

DATE: _____ SIGNATURE: _____

TITLE: _____

UTAH DIVISION OF RADIATION CONTROL
CERTIFICATE - TERMINATION AND
DISPOSITION OF RADIOACTIVE MATERIAL

INSTRUCTIONS
FOR
RADIATION SURVEY REPORT

Prior to the release of facilities and equipment for uncontrolled use, the licensee shall submit a radiation survey report to confirm the absence of radioactive material or to establish the levels of residual radioactive contamination, unless the licensee demonstrates the absence of residual radioactive contamination in some other acceptable manner. (Refer to Table 1, Acceptable Surface Contamination Levels for Uncontrolled Release of Facilities and Equipment.)

In accordance with R313-22-36(4)(a)(v)(A) and (B) and R313-22-36(4)(c)(ii), please provide the following information, as appropriate:

1. Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces; and report levels of radioactivity, including alpha, in units of disintegrations per minute, or microcuries, per 100 square centimeters removable and fixed on surfaces; microcuries per milliliter in water; and picocuries per gram in contaminated solids such as soils or concrete.

   Regulatory guidance concerning radiation levels in water and in contaminated solids, such as soils or concrete, is available from the Division of Radiation Control.

2. Specify the instrumentation used and certify that each instrument was properly calibrated and tested.

3. Submit a plan for decontamination, if required, in regards to remaining radioactive contamination.

   Regulatory guidance is available from the Division of Radiation Control to assist a licensee in the preparation of a plan for decontamination of facilities or equipment.

UTAH DIVISION OF RADIATION CONTROL
CERTIFICATE - TERMINATION AND
DISPOSITION OF RADIOACTIVE MATERIAL

TABLE 1

Acceptable Surface Contamination Levels for Uncontrolled Release of Facilities and Equipment*

Nuclide[a]	Average [b,c,f]	Maximum [b,d,f]	Removable [b,c,f]
U-Nat, U-235, U-238 and associated decay products	5,000 dpm alpha/100 cm^2	15,000 dpm alpha/100 cm^2	1,000 dpm alpha/100 cm^2
Transuranics, Ra-226, Ra-228, Th-230, Th-228, Pa-231, Ac-227, I-125, I-129	100 dpm/100 cm^2	300 dpm/100 cm^2	20 dpm/100 cm^2
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	1,000 dpm/100 cm^2	3,000 dpm/100 cm^2	200 dpm/100 cm^2
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above	5,000 dpm beta-gamma/100 cm^2	15,000 dpm beta-gamma/100 cm^2	1,000 dpm beta-gamma/100 cm^2

[a] Where surface contamination by both alpha- and beta-gamma emitting nuclides exists, the limits established for alpha- and beta-gamma emitting nuclides should apply independently.

[b] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[c] Measurements of average contaminant should not be averaged over more than one square meter. For objects of less surface area, the average should be derived from each such object.

[d] The maximum contamination level applies to an area of not more than 100 cm^2.

[e] The amount of removable radioactive material per 100 cm^2 of surface area should be determined by wiping the area with a dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.

[f] The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at 1 cm and 1.0 mrad/hr at 1 cm, respectively, measured through not more than 7 milligrams per square centimeter of total absorber.

* Contamination on equipment or surfaces shall not be covered by paint, plating or other covering material unless contamination levels, as determined by a survey and documented and confirmed by a survey by the Division of Radiation Control, are below the limits specified. Contamination on the interior surfaces of pipes, drainlines or ductwork shall be determined by measurements using radiation survey instrument(s) and smear tests at all traps and other appropriate access points, provided that contamination at those locations are likely to be representative of contamination on the interior of pipes, drainlines, or ductwork.

ATTACHMENT

7

Event reporting in the Agreement States

NRC Handbook
SA-300
Feb 20, 1998

ERRATA SHEET
April 30, 1998
for
Handbook on Nuclear Material Event Reporting in the Agreement States
(Issued: February 20, 1998)

Subsequent to publication of the "Handbook" the following corrections and additions apply:

Reference Manual insert:

FBI A recent revision to Section 831 of Chapter 39 of Title 18 of the U.S. Code regarding criminal activity, includes a significant expansion of Federal Bureau of Investigation (FBI) jurisdiction to initiate criminal investigations and pursue prosecutions when radioactive materials are involved. In instances involving the suspected criminal misuse of nuclear material and byproduct material, your notification of the FBI is warranted. However, the U.S. Attorney's Office and the FBI will determine whether or not a criminal investigation is to be conducted by the FBI or deferred to State or local authorities for investigation and prosecution. The Commission also requests that Agreement States inform NRC of reports of events involving theft or terrorist activities warranting FBI notification.

Please make the following pen and ink corrections to Table 1.2 Event Reporting Requirements, p. 10-11.

10 CFR Part	
20.2201(a)(1)(I) (a)(1)(ii)	Change to read as follows: 20.2201(a)(1)(i) Change the ≥ symbol to read greater than >.
34.25(d)	Change to read as follows: 34.27(d)
34.30(a)	Change to read as follows: 34.101(a)

Please add the following additional reporting requirement to Table 1.2.

39.35 (d)(2)	reports of leaking sealed sources found during periodic leak testing requirement	5 day notification