State of Utah

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Department of
Environmental Quality

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DIVISION OF WATER QUALITY
Walter L. Baker, P.E.
Director

MEMORANDUM

TO: Utah Water Quality Board

THROUGH: Walter L. Baker, P.E.
Director

FROM: Judy Etherington
Wastewater Certification Program Coordinator

DATE: August 21, 2013

SUBJECT: Request To Adopt Amendment to R317-11, "Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems"

As a result of S.B. 21 (2012 General Session) which instituted changes in the duties and responsibilities of the Water Quality Board and the director of the Division of Water Quality, Rule R317-11 was recently subjected to intense review by the Office of the Attorney General for compliance with this bill. These proposed changes address modifications to the rule to clarify how those duties and responsibilities will now be incorporated in the Onsite Professional Certification Program. A couple of definitions were changed to synchronize them with recent proposed changes to Rule R317-4, but no other certification requirements are modified.

The amendment was published in the July 15, 2013 issue of *The State Bulletin*, with comments solicited through August 14, 2013. The comments received have been considered and a response drafted by DWQ staff as shown in the attached response summary.

It is recommended that the Water Quality Board adopt the attached proposed changes to *Utah Administrative Code, R317-11* as published.

Attachments: Summary of Proposed Revisions to R317-11; Comments Received with Response Summary; & text of Revisions to *Utah Administrative Code, R317-11*, "Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems"

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File: Administrative Rules /OnsiteProfessionals/ Revisions 2013

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SUMMARY OF PROPOSED REVISIONS TO R317-11

The following changes are made.

- Change language to reflect the transfer of responsibility for administration of the certification program from the executive secretary to the director.
- Removed numbering of definitions in coordination with the recent proposed changes to R317-1.
- Added a definition for "Approved Training Provider" to replace the definition which limited who could provide the required training and appeared to not comply with the state purchasing requirements.
- Changed definitions for "Alternative onsite wastewater system" and "conventional system" to be the same as those proposed for the new R317-4.
- Corrections to punctuation, capitalization, and references to comply with Division of Administrative Rules guidelines.
- Changed wording to minimize unnecessary duplication of phrases that are relevant to multiple levels of certification requirements.
- Added language to include the addition of the requirement of S.B. 81 (2008 General Session) regarding citizenship or alien identification certification.
- Changed term "gross negligence" to "significant negligence" at the advice of counsel.

R317. Environmental Quality, Water Quality.

R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems.

R317-11-1. Authority, Purpose and Scope.

1.1. This rule describes the procedures for certification and recertification of individuals who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as set forth in Title 19, Chapter 5, Section 121.

1.2. The purpose of this rule is to define the minimum requirements for those persons who design, inspect, and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems[~~ as directed by the board~~] and establish methods for compliance and evaluating non-compliance.

1.3. These certification rules apply to any person who designs, inspects, or maintains underground wastewater disposal systems, or who conducts soil evaluations or percolation tests for underground wastewater disposal systems. Certification is required by any person who performs these activities as provided below.

R317-11-2. Definitions.

[~~2.1.~~]"Alternative onsite wastewater system" means [~~a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state~~]an onsite wastewater system that is not a conventional onsite wastewater system.

"Approved Training Provider" means a provider approved by the director for training and examinations for certification of persons who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems.

[~~2.2. "Board" means the Utah Water Quality Board.~~

~~2.3.~~]"Certificate" means a certificate issued by the [~~Executive Secretary~~]director stating that the recipient has met the minimum requirements to be certified as described in this rule.

[~~2.4.~~]"Conventional system" means an onsite wastewater system [~~which consists~~]typically consisting of a building sewer, a septic tank, and an absorption system [~~consisting of a standard~~]utilizing absorption trenches, [~~a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an~~]absorption beds, deep wall trenches, or seepage pits.

[~~2.5.~~]"Director" means the director of the Division of Water Quality.

"Division" means the Utah Division of Water Quality.[

~~2.6. "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.~~]

[~~2.7.~~]"Onsite professional" means a person who is certified at Level 1, 2, or 3 according to this rule.

[~~2.8. "Training Center" means the Utah On-site Wastewater Treatment Training Center which has been designated by the Executive Secretary for training and administration of examinations for certification of persons who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems.~~

~~2.9.~~]"Underground Wastewater Disposal System" means a system for underground disposal of wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems as defined in Rule R317-1.

R317-11-3. Classes of Certification.

3.1 There are three classes of onsite professional certification, Level 1 being the lowest and Level 3 being the highest:

A. Level 1, soil evaluations and percolation testing;

B. Level 2, design, inspection and maintenance of conventional underground wastewater disposal systems, including soil evaluations and percolation testing; and

C. Level 3, design, inspection and maintenance of alternative or conventional underground wastewater disposal systems, including soil evaluations and percolation testing.

R317-11-4. Individuals Not Required to Obtain Certification.

4.1. An individual is not required to obtain certification 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.

4.2. An uncertified individual may conduct soil evaluations or percolation 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:

A. [~~H~~]has the capability of properly conducting the tests, as determined by the local health department and

B. [~~I~~]is supervised by a certified individual when conducting the tests.

4.3. A person involved in the pumping of an underground wastewater disposal system does not have to be certified under this rule, although [~~licensing by~~]notification to the local health department is required under Rule R317-550.

4.4. Licensed plumbers and electricians, when maintaining electrical equipment or wastewater drainage lines leading to the underground wastewater disposal systems, are not required to be certified under this rule.

4.5. Uncertified employees, subordinates or associates of a certified individual are not required to be certified under this rule when working on activities related to underground wastewater disposal systems under the supervision of a certified individual. Supervision means that a certified individual is personally responsible for the work, and reviews, corrects and approves work done by an uncertified employee, subordinate or associate. Such work must be signed by a certified individual.

R317-11-5. Qualifications for Certification.

5.1. [~~Level 1, Soil Evaluations and Percolation Testing.~~]In order to qualify for initial Level 1 certification, a person must:

A. [~~A~~]attend a training course provided by [~~the Training Center~~]an approved training provider specifically for the purpose of certification at Level 1[~~,~~]; and

B. [~~D~~]demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 1 training course.

5.2. [~~Level 2, Design, Inspection and Maintenance of Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing.~~]In order to qualify for initial Level 2 certification, a person must:

A. [~~A~~]attend a training course provided by [~~the Training Center~~]an approved training provider specifically for the purpose of certification at Level 2[~~,~~];

B. [~~D~~]demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 2 training course[~~,~~]; and

C. [~~B~~]be certified for soil evaluations and percolation testing at Level 1.

5.3. [~~Level 3, Design, Inspection and Maintenance of Alternative or Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing.~~]In order to qualify for initial Level 3 certification, a person must:

A. [~~A~~]attend a training course provided by [~~the Training Center~~]an approved training provider specifically for the purpose of certification at Level 3[~~,~~];

B. [~~D~~]demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 3 training course[~~,~~]; and

C. [~~B~~]be certified for soil evaluations and percolation testing at Level 1, and certified for design, inspection and maintenance of conventional systems at Level 2.

5.4. All applicants are required to take an examination, but an applicant's current licensing and experience may be substituted for attending the training courses described in Subsections R317-11-5.1.A, R317-11-5.2.A, and R317-11-5.3.A, as follows:

A. An environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act[~~, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training,~~] qualifies to substitute licensure and experience for required training for a Level 1, 2 or 3 certification if the Environmental Health Scientist [~~must provide~~]provides to the [~~Executive Secretary~~]director evidence of current licensure in Utah and [~~2~~]two years experience appropriate to the class of certification requested.

[~~5.5.~~]B. A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act[~~, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training~~] qualifies to substitute licensure for required training for a Level 1, 2, or 3 certification if the professional engineer [~~must provide~~]provides to the [~~Executive Secretary~~]director evidence of current Utah licensure.

[~~5.6.~~]C. A person who is a contractor licensed under Title 58, Chapter 55, Utah Construction Trades licensing Act[~~, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1 or 2. In order to qualify for waiver of training~~] qualifies to substitute licensure and experience for required training for a Level 1 or 2 certification if the licensed contractor [~~must provide~~]provides to the director evidence of at least five years of experience installing [~~constructing~~]underground wastewater disposal systems.

5.[~~7~~]5. Evidence of current licensure and experience appropriate to the class of certification must be provided to the [~~Executive Secretary~~]director at the time of application for certification.

5.6. An applicant is also required to meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

R317-11-6. Application for Certification.

6.1. In order to become certified at any level, a person must:

A. meet the qualifications for certification as described in Section R317-11-5[~~Complete the relevant training course(s) with the Training Center (See R317-11-5.4 – 5.6 above for alternate requirements for licensed environmental health scientists, engineers, and contractors)~~]; and

B. [~~Pass the corresponding test(s); and~~

~~C. S~~]submit an application to the [~~Executive Secretary~~]director on forms approved by the [~~D~~]division, including citizenship or alien identification certification, along with payment of applicable fees.

R317-11-7. Training and Examinations.

Training will be provided by [~~the Training Center~~]an approved training provider. Examinations will be given at the conclusion of each training session. Training will be provided at least twice per year, but may be given more often at the discretion of the [~~Training Center~~]approved training provider.

R317-11-8. Certificates.

8.1. Certificates will be issued by the [~~Executive Secretary~~]director upon receipt of the completed application, required fees, and evidence that the requirements of Section R317-11-5 [~~above~~]have been met.

8.2. Date of issuance of an initial certificate will be determined by the date the exam is passed.

8.3. Certificates will expire on December 31 of the appropriate calendar year, calculated in accordance with Section R317-11-9.

R317-11-9. Renewal of Certification.

9.1. Certification renewal is required every 3 years for all levels of certification.

9.2. [~~Eligibility for renewal of certificates is based on continuous certification.~~]A certified individual who renews a certificate in a timely manner continues to be eligible for certification without meeting new requirements unless the certification is suspended, revoked or annulled.

9.3. Renewal of a certificate may be obtained [~~within~~]at any time prior to [~~12 months of~~]certificate expiration by:

A. [~~M~~]making application to the [~~Executive Secretary~~]director along with payment of applicable fees; and

B. [~~Evidence of successfully completing the refresher course(s) as provided by the Training Center or~~]successfully completing the required refresher course or courses provided by an approved training provider; or

C. providing with the application evidence of successfully completing other approved training[~~obtained prior to certificate expiration that is approved by the Executive Secretary~~].

R317-11-10. Lapsed Certifications.

10.1. Expired certifications may be reinstated within [~~6~~]six months after the expiration date by:

A. [~~C~~]completing the required refresher course[~~(s)~~] or courses as provided by [~~the Training Center~~]an approved training provider, and

B. [~~S~~]submitting a renewal application and reinstatement fee to the [~~D~~]division.

10.2. After the reinstatement period, initial certification requirements must be met in order to be certified.

R317-11-11. Exceptions.

The [~~Executive Secretary~~]director has authority to consider exceptions to this rule upon written request.

R317-11-12. Suspension, Revocation, or Annulment of Certification.

12.1. Grounds for suspending, revoking, or annulling a person's certificate may be, but are not limited to, any of the following:

A. [~~D~~]demonstrated disregard for the public health and safety;

B. [~~M~~]misrepresentation or falsification of information or reports submitted to the [~~D~~]division;

C. [~~C~~]cheating on a certification exam;

D. [~~F~~]falsely obtaining or altering a certificate; or

E. [~~I~~]incompetence, misconduct or [~~gross~~]significant negligence in the performance of work done pursuant to the certification.

12.2. Disciplinary action such as suspension, revocation, or annulment of certificate by the [~~Executive Secretary~~]director may result where it is shown that the circumstances and events relative to the work done pursuant to the certification were under the individual's jurisdiction and control. Circumstances beyond the control of the individual shall not be grounds for disciplinary action.

12.3. Any certificate not issued [~~through due process of~~]as specified in this rule will be annulled.

12.4. Recommendations may be made to the [~~Executive Secretary~~]director regarding the suspension, revocation, or annulment of a certificate. Prior to making any such recommendation, the individual shall be informed in writing of the reasons for such a recommendation. The individual shall be allowed an opportunity for an informal hearing before a review committee appointed by the [~~Executive Secretary~~]director. Any request for an informal hearing shall be made within 30 days of the date the notification is mailed.

12.5. Following an informal hearing, or the expiration of the period for requesting a hearing, the [~~Executive Secretary~~]director shall be notified of the final recommendation.

12.6. A challenge to the [~~Executive Secretary~~]director's determination may be made as provided in Rule [~~R317-9-3~~]R305-7.

R317-11-13. Certification Requirements and Effective Dates.

[~~After January 1, 2002, no~~]No person shall design, inspect, maintain, or conduct soil evaluations or percolation tests for an underground wastewater disposal system unless they hold current certification from the [~~Executive Secretary~~]director, except as exempted in Section R317-11-4.

R317-11-14. Noncompliance.

[~~14.1.~~]Noncompliance with these [~~C~~]certification rules is a violation [~~of~~]under Section 19-5-[~~121~~]115 [~~Utah Code Annotated~~]and may be subject to enforcement by the director.[

~~14.2. Cases of noncompliance with this rule shall be referred to the Executive Secretary.~~]

KEY: waste water, occupational licensing, certification, onsite professional
Date of Enactment or Last Substantive Amendment: [~~June 27, 2012~~]2013
Notice of Continuation: June 27, 2011
Authorizing, and Implemented or Interpreted Law: 19-5-104; 19-5-106; 19-5-121

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Comment: Comments on R317-11 Ben Witt, Alternative Onsite Solutions:

"The language all throughout this rule refers to individuals who obtain the certification as "onsite professionals". It is very concerning to me that a person with no prior experience in onsite wastewater can go through a training workshop that takes only a few days and has a 95% passing rate and then become a "certified professional". These certificates allow individuals to design septic systems and perform soils evaluations for projects up to 4,999 gallons per day e.g. schools, small communities, industrial facilities, commercial complexes. It seems to me that it would be prudent for a person to show some level of experience before allowing them to design a septic system for a small school. Nearly every professional license in the State of Utah requires a prerequisite of experience and proof of liability insurance before a person is given a professional license. The DWQ onsite certificates should have the same bar as other professional licenses.

"The recent changes to R317-4 now allow a "certified professional" to conduct soils evaluations without doing a perc test. A soils evaluation is a very subjective test, and it takes a great deal of time for an individual to be able to distinguish the subtle differences in soil types. Having participated in the stakeholders group for R-317-4 this was an item of concern for several stakeholders. Every soils expert that has voiced an opinion on this has unanimously agreed that it takes more than a couple of days in a training class to be able to perform a soils evaluation. An additional concern with this is that there is no limit on the size of project that a level 1 "certified professional" can perform a soils evaluation for. So a person having no prior experience with soils could go through the 1-2 day training, get their level 1 certificate and then sign off on the soils evaluations for a 10,000 home /50,000 gallon a day community onsite system.

"I troubleshoot failed septic systems all the time, and I frequently find failures because the soil evaluation was conducted improperly, or the system wasn't designed right. I would implore the water quality board to add the requirement of experience to R317-11-5 before giving individuals the certificate and title of "onsite professional"."

Response: Mr. Witt's comments may be summarized "There should be an additional experience requirement in the rule, besides training and testing, especially for those allowed to perform soil evaluations, before granting a certificate and title of "onsite professional". Although these comments are not pertinent to those parts of the rule that are being changed or modified, staff has responded.

The concern that those individuals performing soils examination work, including the most familiar type, percolating testing (which is still allowed in the new rule), need experience to perform them was discussed at length during work group and stake holders meetings held prior to the latest rule revision of R317-4 Onsite Wastewater Systems. In recognition of this

important and ongoing need, DWQ met with the Training Center with this request and as a result, they have reformatted their training to put more emphasis in training and testing requirements for soils work by:

1) Lengthening class time
2) Adding more 'hands-on' training in soils
3) Revising exams to increase difficulty of questions in soils, and
4) Adding additional hands-on training of soil texturing skills and soil pit evaluation skills.

Soils work is performed by an individual certified per R317-11 and required for site feasibility on all onsite wastewater system applications, including the Large Underground Wastewater Systems that fall under DWQ's jurisdiction. Applications, including the soils component, are reviewed by licensed environmental scientists for accuracy, and for compliance with current state rules. If inconsistencies are discovered, the regulator asks for additional soils work, or the applicant can appeal a rejection to higher management staff. Additionally, a lab test can be performed to verify soils descriptions by actual percentage analysis.

Staff Recommendation: Experience is recognized as being important, but it is difficult to draft rules covering minimum requirements, such as where the standard should be set, who should verify that the experience meets the qualifications, how it is obtained, evaluated, and documented, and what type of experience qualifies. With recent adoption of rule R317-4, soils work and identification will continue to be somewhat important in site feasibility and design, although the new design flow requirements and drainfield sizing helps cover minor soil identification errors by having very conservative design requirements. It is hoped that the additional training emphasis on soils will be beneficial. If it is discovered that additional training is still needed, a work group will be created to address and offer corrections to this concern.

Staff feels that with the additional soils training emphasis, and the continuation of the requirement that all sites have soils reviewed by a licensed environmental scientist, the current certification requirements are adequate and no change is needed. [No change to proposed rule.]