



Generator Site Access Permit Enforcement Policy

PREPARED BY

**DIVISION OF RADIATION CONTROL
UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY**

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General Statement of Policy and Procedure for Division of Radiation Control Generator Site Access Enforcement Actions

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I. Introduction and Purpose

The purpose of the Division of Radiation Control (DRC) Generator Site Access (GSA) enforcement policy is to support the DRC's overall safety mission in protecting the public and the environment from undue hazards and their associated risks through the uniform application of enforcement action as specified.

II. Statutory Authority and Procedural Framework

The procedures set forth in R313-26 (Generator Site Access Requirements for Accessing Utah Radioactive Waste Disposal Facilities) enables the DRC to exercise its enforcement authority. Procedures found in R313-14-15 (Enforcement Actions) prescribes civil penalties.

III. DRC Policy

Permittees are required to offer shipments that are compliant with the EnergySolutions Radioactive Material License.

Shipments containing DOT non-regulated material shall be packaged to assure package integrity and containment of waste material shipped.

IV. Severity of Violations

Violations/Findings are assigned a point value from 10 to 525 points. Point assessment is based on Appendix A of this document. In general, violations/findings are meant to address conditions with significant high potential impact as well as cases of minor concern that, if left uncorrected, could lead to more serious problems.

V. Enforcement Actions

This section describes the enforcement sanctions available to the DRC and specifies the conditions under which each may be used. Enforcement procedures begin with administrative actions that include telephone notification, and may include follow up written notification, Confirmatory Action Letters and Demands for Information. Enforcement actions can escalate to Notices of Violation, orders of various types, the imposition of civil penalties and/or suspension or revocation of site access permits. When selecting the enforcement sanctions or administrative actions, the DRC will consult the provisions of R313-14, Violations and Escalated Enforcement.

When a violation of DRC requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation is the normal action. However, circumstances regarding the violation findings may warrant discretion being exercised such that the DRC refrains from issuing a Notice of Violation or other enforcement actions. Likewise, the Executive Secretary of the Utah Radiation Control Board may review the violations and related circumstances in the aggregate and enhance/reduce enforcement actions.

A. Notification Procedures

Once a potential violation, noncompliant issue or unsafe condition is noted by the inspector, the GSA permittee will be notified as specified below. The progression of notification procedures is directly related to the severity of a potential violation and other relevant circumstances surrounding the event, and are assessed by the severity level point system explained later in this document. Notification¹ of GSA permittees that access requirements have been violated will be done using the following procedures:

- A - Telephone call and written Notice of Deficiency
 - B - Notice of Violation (With or without an Imposition of Civil Penalty)
 - C - Suspension Order (temporary)
 - D - Revocation Order (permanent).
- 1) The first level of notification of a deficiency to a GSA permittee will be by telephone followed by a written Notice of Deficiency (NOD) to the shipper/generator regarding unsafe and/or noncompliant issues. This level of notification is for items of least significance
 - 2) The second level of notification of deficiency to a GSA permittee will include telephone notification followed by a written Notice of Violation (NOV) with the possibility of a Imposition of Civil Penalty. Deficiencies of greater significance or repeat violations that have been identified by the DRC in the past may fall into this category of notification.
 - 3) The third level of notification of deficiency will include notification by telephone followed by a Notice of Violation that includes a temporary Suspension Order and may include Imposition of Civil penalty. Continued repeat violations, and violations of significant concern to the DRC may fall into this category.
 - 4) The forth level of notification includes, notification by telephone, a written NOV, and a Permanent Revocation to access disposal facilities in the State of Utah. The Executive Secretary may also impose a civil penalty.

B. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved. The Executive Secretary of the Utah Radiation Control Board (URCB) may waive all or portions of a written response to the extent relevant information has already been provided to the DRC in writing or

¹Telephone Call to Shipper/Generator regarding Unsafe and/or Noncompliant Issue.

In all circumstances, the DRC staff will notify the shipper/generator by telephone call of any unsafe or noncompliant issue. The shipper/generator may choose to involve the Envirocare staff in the telephone call but should indicate such at the time the call is received so that the generator/shipper may arrange such a call at a later time. A warning Letter of Deficiency documenting the contents of the phone conversation will be sent to the generator/shipper.

documented in a DRC inspection report.

C. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified permit provisions of the Administrative Rules or orders; or (2) any requirement for which a permit may be revoked.

Civil penalties may be imposed up to \$5,000.00 per violation and may be escalated for repeat or duplicate violations.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus permittees' attention on violations of significant regulatory concern.

D. Penalty Assessment

The DRC will generally base Notice of Violation and the Imposition Orders on evaluation of the points assessed against a generator during any single shipping event or over the course of generator shipping campaigns. Typical penalties will generally follow the assessment criteria shown below in Table 1. The structure of this table generally takes into account the gravity of the violation as a primary consideration.

Aggregation of Violation/Finding Point Value Total

In general, point totals are based on each occurrence of a problem in any given shipment. For example, a truck shipment carrying 55 gallon drums of waste; the inspector found two drums not labeled and failed bracing. The point total would be 125 points for failed bracing and 20 points (10 points per drum) for failing to label, for a total of 145 points.

Accumulation of Points

Points are assessed from the date that the Notice of Violation is issued and carry over for 12 consecutive months.

Repetitive Violations

The general standard for increasing a baseline proposed penalty on the basis of repetitive/same item violations is as follows:

A repeat violation of the same item within the preceding 12 months will result in the points for that violation being increased by 25%.

A second repeat violation of the same item within the preceding 12 months will result in a point valuation for that violation being increased by 50%.

<u>Point Value Totals</u>	<u>TABLE 1 Action by DRC</u>
0 - 100	A

101-500
> 500

A+B
A+B and C or D

- A - Telephone call and Letter of Deficiency to shipper/generator regarding unsafe and/or noncompliant issue.
- B - Notice of Violation. (May include Imposition of Civil Penalty upon discretion of Executive Secretary)
- C - Suspension of Order (Temporary)
- D - Revocation Order (permanent).

Appendix A: Point Value Assessment Table and Enforcement Examples

This appendix lists frequently cited violations to be used as examples in determining the appropriate point value assessment for a given violation. Each infraction is assigned a numerical value, shown as points. The points range in degree of significance with 10 points indicating the lowest degree and 525 points for the most significant infraction. The cumulative point total will be used to guide state enforcement action against violators.

<u>Point Value Assessment Table</u> <u>Frequently Cited Violations</u>			
Penalty Guidelines			
		Reference	Points
Permit:			
Failure to register as a generator or shipper of hazardous material with the State of Utah GSA program		R313-26-3	150
Failure to obtain the appropriate GSA permit and/or number of permits (i.e. obtaining a Waste Generator permit instead of Processor permit)		R313-26-2 (see definitions) R313-26-3(9)(a); (b); and (c)	75
Failure to use the correct GSA permit number (typo, transposed)		R313-26-3	25
Shipping papers:			
Failure to provide shipping papers for a shipment of hazardous materials		49 CFR 172.200(a) 49 CFR 171.2 (e)	500
Failure of Hazardous waste manifest (EPA Forms 8700-22 & 22A) to have date and signature, as applicable		49 CFR 172.205	100
Failure to execute the required shipper's certification, when required		R313-15-1006(3) 49 CFR 172.204	100
Failure to list name, address, phone number or generator/shipper information on manifest <i>(A complete and appropriate shipper name that is directly associated with the assigned GSA permit number should be shown on the manifest/shipping papers, otherwise the GSA permit number could then be used for by virtually any shipper).</i>		R313-15-1006(4) 10 CFR 20 App G(1)(A)	25

Point Value Assessment Table
Frequently Cited Violations

Penalty Guidelines

	Reference	Points
Shipping paper information that is not consistent with the required description	49 CFR 172.201(a)(4)	25
Failure to include an identification number or use an incorrect number	R313-19- 100(3)(a)(i)(E) 49 CFR 172.202(a) (1)	125
Failure to include a proper shipping name or using an incorrect proper shipping name	R313-19- 100(3)(a)(i)(E) 49 CFR 172.202(a) (2)	125
Failure to include a hazard class/division number or use an incorrect number	R313-19- 100(3)(a)(i)(E) 49 CFR 172.202(a) (3)	125
Using a shipping description not in the required sequence	49 CFR 172.202(b)	50
Failure to list the number and type of packages	R313-19- 100(3)(a)(i)(E) 49 CFR 172.202(a)(7)	25
Failure to include the total quantity of HM covered by the shipping description	R313-19- 100(3)(a)(i)(E) 49 CFR 172.202(c)	25
Failure to list an exemption number in association with the shipping description	R313-19- 100(3)(a)(i)(E) 49 CFR 172.203(a)	25
Failure to use the letters "RQ" in the shipping description to identify hazardous substances	R313-19- 100(3)(a)(i)(E) 49 CFR 172.203(c)(2)	25
Failure to name radionuclides as required by 172.203(d)(2)	R313-19- 100(3)(a)(i)(E) 49 CFR 172.203(d) (1)	50
Failure to provide an emergency contact number or provide a non-working number	R313-19- 100(3)(a)(i)(E) 49 CFR 172.604(a)(1) 172.604(a)(2)	200
Failure to have an emergency contact number monitored while waste is in transportation	R313-19- 100(3)(a)(i)(E) 49 CFR 172.604(a)(1)	150
Failure to describe the physical and chemical form of the material	R313-19- 100(3)(a)(i)(E) 49 CFR 172.203(d) (2)	25
Failure to list the activity contained in each package	R313-19- 100(3)(a)(i)(E) 49 CFR 172.203(d) (3)	40 75

Point Value Assessment Table
Frequently Cited Violations

Penalty Guidelines

	Reference	Points
Failure to indicate the category of label (White I, Yellow II, Yellow III) and/or transport index	R313-19-100(3)(a)(i)(E) 49 CFR 172.203(d)(4) & (5)	25
Failure to include the words "fissile excepted" for a package containing fissile Class 7 (radioactive) materials that is excepted	49 CFR 172.203(d)(6)(i)	25
Failure to indicate the Criticality Safety Index on shipping papers, when required	49 CFR 172.203(d)(6)(ii)	35
Failure to provide exclusive use instructions, when required	49 CFR 173.427(a)(6)(iv)	25
Failure to accurately complete the NRC Form 541	(NUREG/BR 0204)	10-300
Marking & Labeling:		
Failure to mark industrial packages: TYPE IP-IP-1, TYPE IP-2, TYPE IP-IP-3, TYPE A, TYPE B(U) or TYPE B(M)	R313-19-100(3)(a)(i)(B) 49 CFR 172.310(b)	25
Failure to mark each radioactive package with a gross mass greater than 110 pounds when required	R313-19-100(3)(a)(i)(B) 49 CFR 172.310(a)	25
Failure to affix "Fissile" labels when required	49 CFR 172.400(b)(2)	125
Failure to mark excepted packages for limited quantities of class 7 materials "Radioactive", when applicable	R313-19-100(3)(a)(i)(B) 49 CFR 173.421(a)(4)	25
Failure to mark the outside of an excepted package containing Class 7 material with the UN letters and four digit ID number	49 CFR 173.422(a)	110
Failure to mark packaged or unpackaged of Radioactive LSA, Radioactive SCO, or "RQ"	R313-19-100(3)(a)(i)(B) 49 CFR 173.427(a)(6)(vi)	50
Failure to label each package with Class A, B, or C (minimum of ½" letters in a contrasting color)	R313-15-1008(3) 10 CFR 61.57 10 CFR 20 App G,III,2	10
Failure to mark the proper shipping name or incorrect shipping name on a package, when required	R313-19-100(3)(a)(i)(B) 49 CFR 172.301(a)	50
Failure to mark the identification number or incorrect ID number on a package, when required	R313-19-100(3)(a)(i)(B) 49 CFR 172.301(a)	100
Failure to apply DOT labels when required on package (per package)	R313-19-100(3)(a)(i)(B) 49 CFR 172.400	75

Point Value Assessment Table
Frequently Cited Violations

Penalty Guidelines

	Reference	Points
Placing a label on a package that understates the proper label category (White I, Yellow II, Yellow III)	R313-19-100(3)(a)(i)(B) 49 CFR 172.403(b)	50
Placing a label that fails to contain, or has erroneous entries for the name of the radionuclide(s) and/or activity	R313-19-100(3)(a)(i)(B) 49 CFR 172.403(g)(1-3)	50
Placing a label that represents a hazard other than the hazard presented by the HM in the package	R313-19-100(3)(a)(i)(B) 49 CFR 172.400 & 172.401(a)(2)	200
Placing a label on a package that does not contain a hazardous material	R313-19-100(3)(a)(i)(B) 49 CFR 172.400 & 172.401(a)	75
Placarding:		
Failure to properly placard according to Subpart F	49 CFR 172.500(a)	
Missing placards (each)	R313-19-100(3)(a)(i)(C) 49 CFR 172.516(c)(1)	15
Placard not securely attached or affixed or placed in a holder	R313-19-100(3)(a)(i)(C) 49 CFR 172.516(c)(1)	10
Obscured, torn, or damaged placards (each)	R313-19-100(3)(a)(i)(C) 49 CFR 172.516	10
Placard not square on point (each)	R313-19-100(3)(a)(i)(C) 49 CFR 172.516 & 172.519	10
Color incorrect faded (each)	R313-19-100(3)(a)(i)(C) 49 CFR 172.519(d)(3)	10
Package:		
Failure to utilize the proper packaging	49 CFR 173.22(a)(2)	300
Failure to assure the package compatibility with material	49 CFR 173.24(b)(2)	300
Failed package integrity and/or failure to contain waste material (non regulated material)	DRC Policy R313-26	125
Package breach (no spilled material) fail to use strong tight package	49 CFR 173.410 49 CFR 173.475(b) 10 CFR 71.87(b)	250
Package breach in transit to the facility - results in contamination but does not impact health or the environment	49 CFR 173.24(b)	350

Point Value Assessment Table
Frequently Cited Violations

Penalty Guidelines

	Reference	Points
Package breach resulting in contamination that impacts health or the environment	R313-15	525
Packages in a transport vehicle exceeds a TI of more than 50 (exclusive use shipments are excepted)	49 CFR 174.700(b) & 177.842(a)	250
Packages non-exclusive use in a transport vehicle exceeds a CSI of more than 50, exclusive use not to exceed 100	49 CFR 173.457(d) 49 CFR 173.457(e)	250
Type A packaging must incorporate a tamper proof seal or similar	49 CFR 173.412(a)	20
Contamination and Radiation Levels:		
Contamination on vehicle, railcar, or package > DOT limit (all shipments except exclusive use)	49 CFR 173.443	200
Loose radioactive material in the conveyance	49 CFR 173.427(a)(ii)	125
Excess DOT radiation levels for cab, surface, plane, or at 2 meters from plane	49 CFR 172.441	350
Load Bracing:		
No bracing provided	49 CFR 173.410(a)	200
Failed bracing	49 CFR 173.410 49 CFR 173.448 49CFR 173.427(a)(iii)	125
Loosening, failed, or unintentional release of closing devices	10 CFR 71.87(c) 49 CFR 173.475(c)	125
Miscellaneous:		
Unauthorized liquids in waste shipment	R313-15-1009(2)(a)(iv)	150
Unauthorized liquids in waste resulting in the spread of contamination that can be properly remedied with no impact to health or the environment	R313-15	250
Unauthorized liquids in waste shipment resulting in contamination that impacts health and/or the environment	R313-15	525
Mischaracterization of the waste shipment by the generator/shipper (e.g. classification error, Class A, B, or C low-level radioactive waste, mixed waste, etc.) That does not results in improper disposal	10 CFR 61.55	300
Mischaracterization of the waste shipment by the generator/shipper (e.g. classification error, Class A, B, or C low-level radioactive waste, mixed waste, etc.) That results in improper disposal	10 CFR 61.55	525

Point Value Assessment Table
Frequently Cited Violations

Penalty Guidelines

Reference

Points

Other noncompliance activities not specifically covered by this chart, including Permittees are required to offer shipments that are compliant with the EnergySolutions Radioactive Material License.

Determined by the Executive Secretary