**R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**

**R649-9. Exploration and Production Recycling Facilities.**

**R649-9-1. Introduction.**

(1) Section 40-6-5 authorizes the board to regulate the recycling of E and P products, including produced water. It is the intent of the board and division to regulate E and P recycling facilities for the reuse of produced water and other E and P products in a manner that protects the environment, limits liability to producers, promotes opportunities for reuse of produced water and other recyclable E and P products and minimizes the volume of waste and use of freshwater.

(2) Rule R649-9 specifies the informational and procedural requirements for management and permitting of E and P recycling facilities.

(3) For the purposes of Rule R649-9, E and P recycling facilities include the following facilities:

(a) Long Term produced water recycling pond facilities;

(b) Temporary produced water recycling tank facilities;

(c) Waste crude oil treatment facilities; and

(d) Other potential E and P product recycling facilities. It is the intent of this rule to create a basic framework for division review and permitting of potential unforeseen E and P product recycling opportunities.

(4) E and P recycling facilities may not be used for the disposal of produced water or other E and P products.

(5) Rule R649-9 is intended for E and P recycling facilities and do not apply to Class II injection wells and pits associated with these wells.

(6) The operator is ultimately liable for the continued stability and proper operation of the facility. The division's primary role during permit review is to ensure the E and P recycling facility has been designed and certified by a Utah Licensed Professional Engineer.

(7) This rule does not authorize the use of produced water as part of a consumptive beneficial use without a water right, and any nonconsumptive use of produced water in an oil and gas activity must be consistent with Title 40, Chapter 12, Produced Water Act.

**R649-9-2. General E and P Recycling Facility Management.**

(1) Each E and P recycling facility must be permitted and in good standing with the division.

(a) Each approved E and P recycling facility shall be identified with a suitable sign showing facility name, operator, location and emergency number.

(b) Each E and P recycling facility shall provide a written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of a release of H2S gas. The contingency plan shall be submitted to the division as part of the initial facility application as determined by OSHA standards.

(c) The E and P recycling facility shall be fenced and maintained to deter access by livestock and wildlife, and equipped with either flagging, netting, floating or solid cover to deter entry by birds and waterfowl.

(2) Good housekeeping practices shall be used, such as:

(a) Debris and trash shall be removed and properly disposed of.

(b) Equipment shall be maintained and kept in good condition. Equipment not being used for operations, or otherwise awaiting repair, shall be locked and tagged. Equipment not in use for longer than 12 months shall be removed from the site. Chemicals used to treat produced water shall be stored per OSHA regulations.

(c) Operators shall catch leaks, drips, contain spills, and cleanup promptly.

(d) Each E and P recycling facility shall be operated in accordance with an approved application and in a manner that does not cause safety or health hazards.

(3) All solid and hazardous waste generated by an E and P recycling facility shall be disposed of by the operator at a waste facility in accordance with the requirements in Title 19, Chapter 6, Solid and Hazardous Waste Act and the associated rules.

(4) Enhanced evaporation systems, such as sprinklers or similar devices, are strictly prohibited.

**R649-9-3. General Permit and Application Requirements for E and P Recycling Facilities.**

(1) Applications for new E and P recycling facilities or major modifications shall be submitted to the division and shall include the following:

(a) A business plan describing the products and services to be provided, an outline of the organization and management of the E and P recycling facility and an explanation of the need for the proposed facility or modification to an existing facility;

(b) Names and addresses of each applicant, operator's authorized agent and owner in the E and P recycling facility. For the purposes of this section, interested parties means elected county officials, county regulatory staff, and officials and staff representing state regulatory agencies with permitting authority related to E and P recycling facilities.

(c) A contingency plan designed to minimize any hazards to fresh water, public health and safety, or the environment in the event of an unplanned fire, explosion, or a release of contaminants or E and P products to the air, soil, surface water or groundwater.

(d) A management plan describing all chemical processes, estimated volumes and chemical profiles used in the treatment of E and P products for odor, bacteria control or other treatment needs, and any products generated by these processes;

(e) The method and schedule for disposal of precipitated solids and any other wastes generated by the E and P recycling facility.

(2) Siting requirements for new E and P recycling facilities and major modifications shall include the following:

(a) The E and P recycling facility shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.

(b) A pre-site inspection shall be conducted with the operator to assess site suitability, along with accuracy and completeness of the permit application. The landowner, operator and other interested parties should be invited to attend.

(3) Geologic and hydrological requirements.

(a) The E and P recycling facility may not be located in a geologically or hydrologically unsuitable area.

(b) The applicant shall provide geological and hydrological evidence showing that the proposed E and P recycling facility will not adversely affect existing water quality or major uses of such waters.

(c) Any discharge of produced water, other than for approved recycling use is not permitted, unless the relevant permit and authorization is obtained from the appropriate agency.

(4) Any produced water intake shall be designed, maintained and operated to adequately process the anticipated maximum daily quantity of produced water.

(a) The produced water intake shall be designed with a leak detection system unless determined unnecessary by the division.

(b) Applicants shall submit the procedures for repair should leakage occur.

(5) Applicants shall submit the maximum daily quantity of produced water able to be received.

(a) Applications for E and P recycling facilities that will primarily be for the reuse of produced water shall also include a water analysis from the producing formations tapped by any source wells that includes the concentrations of chlorides and sulfates, pH, total dissolved solids (TDS).

(i) Samples for water analysis of the producing formations may be derived from the water commingled within the operator's pipeline network.

(b) Information regarding any other significant constituents within the produced water may be requested by the division, which information will be kept as business confidential by the division if the applicant requests such information to be protected pursuant to Section 63G-2-309.

(6) The E and P recycling facility shall be designed and constructed so as to prevent run-on and run-off of surface water, up to peak discharge from a 25 year, 24 hour storm.

(7) The E and P recycling facility shall be designed such that intake and discharge of E and P products can only occur when an attendant is on duty, or other security measures are set in place and approved by the division.

(8) Applicants should verify with the Utah Division of Air Quality to determine if an air quality permit is required.

(9) Applicants shall provide at least one background water sample from each perennial surface and subsurface water resource within one-half mile of the E and P recycling facility.

(a) One background water sample taken from each required perennial surface water resource taken upstream of the E and P recycling facility;

(b) One background water sample taken from each required perennial surface water resources taken downstream of the E and P recycling facility;

(c) At least one background water sample taken from the shallowest subsurface groundwater aquifer located beneath the facility; and

(d) Background water samples shall include TDS, pH and specific conductivity.

(10) One-piece exempt tanks are exempt from the permitting requirements under Rule R649-9, but are subject to the following requirements:

(a) The one-piece exempt tank must be approved as part of any approved well pad pursuant to Rule R649-3; and

(b) The one-piece exempt tank shall have secondary containment or berming sufficient to capture 110% of the largest potential release from the one-piece exempt tank, which containment must be located around either the one-piece exempt tank or the well pad upon which the one-piece exempt tank is located.

**R649-9-4. Specific Permit, Application, and Operation Requirements Applicable to Long Term Produced Water Recycling Pond Facilities.**

(1) Long term produced water recycling pond facilities shall be designed, constructed and operated to meet the following specific requirements in addition to Section R649-9-3, General Permit and Application Requirements for E and P Recycling Facilities.

(2) The applicant shall submit a topographic map and drawing of the site, on suitable scale, that identifies all geologic cross sections, side slopes, equipment, secondary containment, test borings, roads, fences, gates, wells and springs, drainage patterns, pipelines, surface area to be disturbed, buildings and chemical storage areas within one-half mile of the site perimeter and location relative to other site facilities. The drawings shall be of professional quality.

(3) Any new long term produced water recycling pond facility, after February 2025, shall be located a minimum of one-half mile from residences or occupied buildings not associated with the facility unless a waiver is signed by the owners of the residences and buildings within one-half mile.

(4) Geologic and hydrological requirements for long term produced water recycling pond facilities or modifications.

(a) The long term produced water recycling pond facility may not be located in a geologically or hydrologically unsuitable area, such as aquifer recharge areas, protection zones for public drinking water sources, flood plains, drainage bottoms, areas on or near faults, within 1,000 feet of a national inventory wetland, water-course or lakebed, where groundwater is less than 50 feet below the lowest elevation at which the operator will place E and P products, or within the area overlying a subsurface mine.

(b) Regional and local geological information shall include bedrock strike and dip, fracture patterns, slope stability, faulting, folding, rockfall, landslides, subsidence or erosion potential, and surface water features that may affect the design and operation of the facility.

(c) Representative analysis of long term produced water recycling pond facility surface and subsurface soils submitted to the division shall include electrical conductivity, exchangeable sodium percentage, sodium adsorption ratio, or other analysis determined necessary by the division for establishing background soil concentrations.

(d) Geologic cross sections submitted to the division shall include depth to shallow ground water, formation names, and type and name of the shallowest fresh water aquifer beneath the proposed site.

(e) If determined necessary by the division, applicants shall submit groundwater analysis of aquifers beneath the proposed site.

(f) If determined necessary by the division, monitoring wells shall be constructed in a manner that will provide the ability to measure or observe the level, quality, quantity, or movement of subsurface water.

(g) If determined necessary by the division, applicants shall submit potentiometric maps of the shallowest aquifers.

(5) Long term produced water recycling pond facility applicants shall submit detailed construction or installation diagrams of ponds, side slopes, liners, pond storage capacity, leak detection systems, dikes or levees, wind fences, piping, water treatment systems, and tanks.

(a) The long term produced water recycling pond facility shall be designed, maintained and operated to separate oil, or floating solids, from produced water before discharge into a pond. The repeated occurrence of unreported oil or solids on the produced water recycling pond surface will result in permit suspension or facility closure, or both.

(6) Applicants should verify with the Division of Water Rights, Dam Safety Section, whether a dam permit is required for their proposed E and P recycling facility. A copy of an approved dam permit for the facility, or documentation exempting the facility from dam regulations, issued by the designated regulating authority must be provided to the division before application approval.

(a) Any construction requirements included in a dam permit will be incorporated into a permit issued by the division for the proposed E and P recycling facility.

(7) Long term produced water recycling pond facility applicants shall submit detailed construction and installation diagrams of unloading facilities and an explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation on the ponds.

(8) Long term produced water recycling pond facilities shall be designed and maintained to meet the following requirements:

(a) Pond size may not exceed 80 acre-feet, unless otherwise approved by the division;

(i) For ponds larger than 80 acre-feet, the division may require installation of additional liners or other monitoring equipment;

(b) Ponds shall be designed to prevent unauthorized surface or subsurface discharge of water;

(c) Ponds shall be designed to include two-foot free-board that is clearly marked at all times; and

(d) Pond levees shall be constructed so that the inside grade of the levee is no steeper than 3:1and the outside grade no steeper than 2:1;

(i) The top of the levee shall have a 2% cross slope toward the pond and be of sufficient width to allow for adequate compaction, as determined by a Utah Licensed Professional Engineer; and

(ii) Vertical height of the levees may not exceed 25% of the total vertical depth of the pond.

(9) Each storage pond in the long term produced water recycling pond facility shall be designed with two synthetic liners, an upper primary and lower secondary liner, with a leak detection system between them. Synthetic liners shall be installed according to the manufacturer's recommendations.

(a) The primary liner shall be constructed with a minimum 60-mil HDPE or equivalent liner approved by the division.

(b) The secondary liner shall be imperious and constructed with a minimum 40-mil HDPE or equivalent liner approved by the division.

(c) The leak detection system between the liners shall be constructed with a HDPE geonet or equivalent liner to provide separation between the primary and secondary liners and to provide for flow of any leaked fluid through the primary liner to the leak detection observation sump.

(d) If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion, contraction and settling movements in the underlying earth, without cracking.

(e) Materials used in lining ponds shall be impervious and resistant to weather, tears and punctures, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances that might be contained in the produced water.

(f) Applicants shall submit the type, thickness, strength, and life span of the materials to be used for lining the pond and the method of installation.

(g) Applicants shall submit procedures for repair of the liner, should leakage occur.

(10) Long term produced water recycling pond facility applicants shall submit detailed construction or installation diagrams for the leak detection system.

(a) The leak detection design shall include a drainage and collection system placed between the upper and lower liners and sloped so as to facilitate the earliest possible detection of a leak.

(b) The leak detection design shall include a vertical riser on the outside portion of the dike allowing direct visual inspection of the sump from the surface.

(i) The sump shall be at least 18" in diameter and designed to extend a minimum of two feet below the inlet line from the pond, allowing visual detection of any fluid and sampling of fluid.

(ii) Designed with a removable top for the sump riser that will prevent entry of fluids.

(c) Designed with leak detection piping capable of withstanding chemical degradation from E and P products, structural loading from stresses and disturbances from overlying E and P products and cover materials, equipment operation, expansion or contraction, and facilitate clean-out maintenance.

(11) Long term produced water recycling pond facilities shall be operated to separate oil from produced water before discharge into a pond and prevent unauthorized surface discharge of water.

(a) Hydrocarbon accumulation, other than de minimis quantities, on an produced water recycling pond is considered a violation and shall be both reported to the division and removed within 24 hours.

(b) Overspray caused by wind, including foam, outside lined areas are considered a violation and shall be corrected immediately.

(c) Sampling and testing of soils suspected to be contaminated from overspray may be required by the division.

(12) Engineering and design requirements for long term produced water recycling pond facilities and modifications.

(a) The long term produced water recycling pond facility shall be designed and sealed by a Utah Licensed Professional Engineer and inspected by a Utah Licensed Professional Engineer as needed to ensure the facility is constructed in accordance with the approved plans .

(i) A construction certification shall be submitted, by the engineer, before the division issuing an operation permit for the long term produced water recycling pond facility.

(b) The long term produced water recycling pond facility shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect freshwater, public health and safety, and the environment for the life of the operation.

(i) The long term produced water recycling pond facility shall be designed with secondary containment to capture 110% of the largest potential release in the event of a catastrophic failure. Earthen berms shall be of adequate impermeability and compaction to withstand a tank or pond failure.

(13) Minimum use requirements specific to long term produced water recycling pond facilities:

(a) A long term produced water recycling facility shall be deemed to have ceased recycling operations if:

(i) less than 25% of the water received by the E and P recycling facility is used for an approved recycling purpose within a 12-month period from January 1 to December 31; or

(ii) no water has been accepted for a period of 36 months.

(b) The operator shall report cessation of recycling operations as a recycling facility to the division;

(i) After an operator has reported cessation of recycling operations, or been deemed to have ceased recycling operations by the division, they will have 18 months to close and reclaim the long term produced water recycling pond facility or apply for a waste permit with the Division of Waste Management and Radiation Control. Refer to Section R649-9-13 for facility closure requirements;

(A) The division may make a determination as to whether an operator has ceased recycling operations based upon review of reported volume intake and discharge records;

(B) The division shall allow an operator to postpone closure of the facility if the operator provides evidence that the long term produced water recycle pond facility will be operated for recycling purposes within the next 12 months.

(c) If the operator wants to continue to use the long term produced water recycling pond facility for a purpose other than recycling the operator must obtain the proper permits for the new purpose from the appropriate agency. Applications for new permits shall be submitted to the appropriate agencies within six months of ceasing recycling operations. The division will not release the bonding required by Section R649-9-9 until either the closure requirements of Section R649-9-13 have been met, or a new permit has been approved by another agency with governing authority over any remaining residuals. New permits shall be obtained, or in the process of being issued, before the end of the 18 month closure period or the facility shall be reclaimed. For E and P solid waste disposal, including produced water, the facility will require a permit from the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control, or the agency designed to regulate such facilities; and

(d) The division may allow an operator to recycle produced water through injection into Class II wells in accordance with Section 40-6-5.

**R649-9-5. Specific Permit, Application and Operating Requirements Applicable to Temporary Produced Water Recycling Tank Facilities.**

(1) Temporary produced water recycling tank facilities shall be designed, constructed and operated to meet the following specific requirements in addition to Section R649-9-3, General Permit and Application Requirements for E and P Recycling Facilities.

(2) Temporary produced water recycling tank facility applicants shall submit detailed construction or installation diagrams of tanks, liners, tank storage capacity, secondary containment berms, piping, pumps, and water treatment systems.

(a) Engineered plans of large capacity storage tank design and manufacturing shall be submitted to the division certifying the adequacy of the tank for the intended purpose.

(3) Temporary produced water recycling tank facility applicants shall provide an estimate of the length of time the facility will be in operation.

(a) Temporary produced water recycling tank facilities shall be approved for a period of 12 months, and can be extended with division approval in six month intervals for a maximum of an additional 24 months.

(4) Temporary produced water recycling tank facility applicants shall provide an estimated volume and rate of fluid anticipated to move through the facility.

(5) Temporary produced water recycling tank facility applicants shall submit detailed construction or installation diagrams of intake and discharge facilities.

(a) The unloading or intake facility shall be designed, maintained and operated to adequately process the anticipated maximum daily quantity of produced water.

(b) The unloading or intake facility shall be designed with a leak detection system, unless determined unnecessary by the division.

(i) Applicants shall submit procedures for repair should leakage occur.

(6) Temporary produced water recycling tank facilities shall be designed, maintained and operated to meet the following requirements.

(a) The temporary produced water recycling tank facility shall be designed with lined secondary containment to capture 110% of the largest potential release in the event of a catastrophic failure. Lined earthen berms shall be of adequate impermeability and compaction to withstand a tank failure.

(b) Large capacity storage tanks shall be placed on cut material, unless adequate compaction of fill material can be demonstrated through engineering certification.

(c) Large capacity storage tanks shall be designed to prevent unauthorized surface or subsurface discharge of water.

(d) Open top large capacity storage tanks shall be covered. Cover construction and design must be approved by the division. Cover placement must be verifiable from a visible ground level inspection. Pictures taken by a drone or other method may be acceptable upon division approval.

(e) Large capacity storage tanks with netted, floating or other tops shall be designed and operated to include a 2-foot free-board at all times.

(f) Enhanced evaporation systems, such as sprinklers or similar devices, are strictly prohibited.

(7) Large capacity storage tank liner requirements.

(a) Lined tanks containing produced water shall be designed with two impervious synthetic liners, an upper primary and lower secondary liner. Synthetic liners shall be designed specifically for the intended use and installed according to the manufacturer's instructions.

(b) If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion, contraction and settling movements in the underlying earth, without cracking.

(c) Materials used in lining tanks shall be impervious and resistant to weather, tears and punctures, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances that might be contained in the produced water.

(d) Applicants shall submit the type, thickness, strength, and life span of the materials to be used for lining the tank and the method of installation.

(e) In the event of a leak or damage to the liner, the operator will immediately empty the tank and remove the tank until the liner can be inspected and if necessary repaired or replaced.

(8) Engineering and design requirements for temporary produced water recycling tank facilities and modifications.

(a) Large capacity storage tanks shall be designed and sealed by a Utah Licensed Professional Engineer.

(b) The facility shall be designed, constructed and operated in a manner that will protect freshwater, public health and safety, and the environment for the life of the operation.

**R649-9-6. Specific Permit, Application and Operation Requirements Applicable to Waste Crude Oil Treatment Facilities.**

(1) Waste crude oil treatment facilities shall be designed, constructed and operated to meet the following specific requirements in addition to Section R649-9-3, General Permit and Application Requirements for E and P Recycling Facilities.

(a) To promote regulatory consistency, the division will not approve permits for waste crude oil treatment facilities that are located within, or work in conjunction with, a solid or hazardous waste disposal facility that is not regulated by the division. If an operator wants to permit a waste crude oil treatment facility for use with a waste disposal facility they will require a permit from the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control, or the agency designated to regulate such facilities.

(2) Before the construction of a waste crude oil treatment facility, an application shall be submitted to the division describing the ownership, location, type, and capacity of the facility contemplated; the extent and location of the surface area to be disturbed, including any land associated with the facility; and a reclamation plan for the site. Approval of the application must be issued by the division before any ground clearing or construction shall occur.

(3) The applicant shall submit a topographic map and drawing of the site, on a suitable scale, that identifies all geologic cross sections, side slopes, equipment, secondary containment, test borings, roads, fences, gates, wells and springs, drainage patterns, pipelines, surface area to be disturbed, buildings and chemical storage areas within one mile of the site perimeter and location relative to other site facilities. The drawings shall be of professional quality.

(4) Any waste crude oil treatment facility permitted after February 2025 shall be located a minimum of one-half mile from residences or occupied buildings not associated with the facility unless a waiver is signed at the time of application by the owners of the residences and buildings within one-half mile.

(5) Geologic and hydrological requirements for waste crude oil treatment facilities.

(a) The facility may not be located in a geologically or hydrologically unsuitable area, such as aquifer recharge areas, protection zones for public drinking water sources, flood plains, drainage bottoms, and areas on or near faults, within 1,000 feet of a wetland, water-course or lakebed, permeable soil where groundwater is less than 50 feet below the lowest elevation at which the operator will place waste crude oil, or within the area overlying a subsurface mine.

(b) Regional and local geologic information shall include bedrock strike and dip, fracture patterns, slope stability, faulting, folding, rockfall, landslides, subsidence or erosion potential, and surface water features that may affect the design and operation of the facility.

(c) Representative analysis of waste crude oil treatment facility surface and subsurface soils submitted to the division shall include Electrical Conductivity, Exchangeable Sodium Percentage, Sodium Adsorption Ratio, or other analysis determined necessary by the division for establishing background soil concentrations.

(d) Geologic cross sections submitted to the division shall include depth to shallow ground water, formation names, and type and name of the shallowest fresh water aquifer beneath the proposed site.

(e) If determined necessary by the division, applicants shall submit ground water analysis of the aquifers beneath the proposed site.

(f) If determined necessary by the division, monitoring wells shall be constructed in a manner that will provide the ability to measure or observe the level, quality, quantity, or movement of subsurface water.

(g) If determined necessary by the division, applicants shall submit potentiometric maps of the shallowest aquifers.

(6) Waste crude oil treatment facility applicants shall submit detailed construction or installation diagrams of tanks.

(a) The facility shall be designed, maintained and operated to separate waste crude oil.

(7) Waste crude oil treatment facility applicants shall submit detailed construction or installation diagrams of unloading facilities.

(8) Engineering and design requirements for waste crude oil treatment facilities and modifications.

(a) The facility shall be designed and sealed by a Utah Licensed Professional Engineer and inspected by a Utah Licensed Professional Engineer as needed to ensure the facility is constructed in accordance with the approved plans.

(i) A construction certification shall be submitted, by the engineer, before the division issuing an operation permit for the facility.

(b) The facility shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect freshwater, public health and safety, and the environment for the life of the operation.

(i) The facility shall be designed with secondary containment to capture 110% of the largest potential release in the event of a catastrophic failure. Secondary containment shall be bermed and lined to withstand a tank failure.

(9) The facility shall be kept free of any spills and waste materials.

(10) No waste crude oil treatment facility operator shall accept delivery of crude oil obtained from any tank, reserve pit, disposal pond or pit, or similar facility unless the delivery is accompanied by a run ticket, invoice, receipt or similar document showing the origin and quantity of the crude oil.

**R649-9-7. Specific Permit, Application and Operation Requirements Applicable to Other Potential E and P Product Recycling Facility Requirements.**

(1) Facilities used for recycling of other potential E and P products, which may include drilling fluids, or muds, reconditioning, or other potential and unforeseen recycling processes, shall be permitted, designed, constructed and operated to meet the following requirements in addition to Section R649-9-3, General Permit and Application Requirements for E and P Recycling Facilities.

(2) The applicants shall submit a complete description of the proposed facility which includes the following:

(a) Processes involved including a complete list of all E and P products to be accepted, and products generated;

(b) Description must explain how the facility processes constitute recycling of E and P products rather than disposal;

(c) Description of solid and hazardous waste to be generated during operations and how such waste will be properly disposed of during operations, and upon closure, in accordance with the requirements of Title 19, Chapter 6, Solid and Hazardous Waste Act and the associated rules;

(i) If the division determines the proposed facility or process constitutes waste disposal the application will be denied;

(d) Maps and drawings of suitable scale showing all facilities and equipment; and

(e) Any other information the division deems necessary for permit review.

(3) The facility shall be designed and sealed by a Utah Licensed Professional Engineer and inspected by a Utah Licensed Professional Engineer as needed to ensure the facility is constructed in accordance with the approved plans.

(a) A construction certification shall be submitted, by the engineer, before the division issuing an operation permit for the facility.

(b) The facility shall be designed, constructed and operated so as to contain E and P products in a manner that will protect freshwater, public health and safety, and the environment for the life of the operation.

(4) The facility shall be maintained and operated in a manner approved by the division for recycling of the intended E and P product.

**R649-9-8. Noticing of E and P Recycling Facilities.**

(1) The applicant for a new E and P recycling facility, or modification to an existing facility, shall give written notice of the application, by certified mail, return receipt requested, to surface owners of record within one-half mile of the facility, the county commission of the county where the facility is located, and affected tribal and government agencies.

(a) The notice shall include information describing the facility's location, basic plan of operations, and the applicant's name and address.

(b) The applicant shall furnish the division proof of required notices.

(c) The division may extend the distance requirements for notice if the division determines that the proposed E and P recycling facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one-half mile.

(2) Within 60 days of the submission of an application for a E and P recycling facility, the division shall review the application as to its completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is determined to be complete, the division shall provide for a public notice to be published on the Utah Public Notice Website (www.utah.gov/pmn) and Utah Legal Notice Website (www.utahlegals.com).

(3) Temporary produced water recycling tank facilities do not require public notice unless determined necessary by the division.

**R649-9-9. Bonding of E and P Recycling Facilities.**

(1) E and P recycling facilities shall be bonded according to this rule to protect the state and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the state with adequate security for site reclamation and post closure cost should a facility owner default.

(a) Each E and P recycling facility shall be covered by an approved bond before being permitted.

(b) Any decision by the division can be appealed through an informal hearing proceeding pursuant to Section R649-10-2.

(2) Bonding for each E and P recycling facilities will be determined as follows:

(a) Permits for new E and P recycling facilities or modifications and facilities being reviewed for 5-year permit renewals, shall submit site reclamation and post closure cost estimates from a responsible third party contractor for division approval;

(i) Post closure cost estimates shall include the cost to remove and properly dispose of E and P products, remove equipment, and reclaim site to meet division cleanup standards. Estimates shall be based on storage tanks, including large capacity storage tanks, being filled to capacity;

(ii) Post closure cost estimates for long term produced water recycling pond facilities shall include the cost of pond reclamation plus an additional 25% to cover water removal. Operators shall be required to submit two third party bond estimates. The division shall determine if the bond amount is sufficient, and shall require an updated cost estimate by the operator supplying two third party estimates every 5 years;

(b) For each E and P recycling facility, other than a temporary produced water recycling tank facility, the applicant shall bond in the amount of the division approved estimate site reclamation and post closure costs, or $100,000 per facility or $100,000 per pond, whichever is greatest; and

(c) For temporary produced water recycling facilities, the applicant shall bond in the amount of the third party estimate, or the division approved estimate site reclamation and post closure cost.

(3) Bonds accepted shall be of the same type as those described in Section R649-3-1.

(4) The total bond will be held by the division or financial institution until:

(a) The facility has been closed and inspected by the division in accordance with a division approved closure plan; or

(b) The division approved the transfer of a permit under Subsection R649-9-10(9) and the replacement bonding is in place.

**R649-9-9a. Forfeiture of Performance Bonds.**

(1) The division shall take action to forfeit a performance bond if any of the following occur:

(a) The operator refuses or is unable to close an E and P recycling facility and perform site restoration;

(b) The operator refuses or is unable to repair an E and P recycling facility or remediate pollution;

(c) Upon receiving a notice of violation, the operator's continued failure to comply with permit conditions as referenced in the notice of violation; or

(d) The operator defaults on the conditions under which the bond was accepted.

(2) In the event the division forfeits a bond, the matter will be considered by the board before the division taking any action to close an E and P recycling facility.

(3) After proper notice and hearing, the board may order the division to do the following:

(a) Use funds collected from bond forfeiture to close an E and P recycling facility and complete site restoration to which bond coverage applies;

(b) Enter into a written agreement with the operator or another party to perform site closure and restoration in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work;

(c) Allow a surety to complete the site closure and restoration, if the surety can demonstrate an ability to complete the closure; or

(d) Take other actions the board deems reasonable and appropriate.

(4) In the event the amount forfeited is insufficient to pay for the full cost of site closure and restoration, the division may complete or authorize completion of site closure and restoration and may recover from the operator all costs in excess of the amount forfeited.

(a) In the event the amount forfeited was more than the amount necessary to complete site closure restoration, the unused funds shall be returned by the division to the party from whom they were collected.

(b) In the event the bond is forfeited and there exists any other E and P recycling facility previously covered under the forfeited bond, the operator must establish new bond coverage in accordance with Rule R649-9 or, upon an order from the division or the Board, cease operations until adequate bonding is provided.

**R649-9-10. Permit and Renewal Approval, Denial, Revocation, Suspension, Modification or Transfer.**

(1) Permit and renewal approval.

(a) Construction approvals issued by the division are valid for one year from the approval date. An extension may be granted by the division.

(2) Long term produced water recycling pond facility permit and renewal.

(a) Operating approvals issued by the division for long term produced water recycling pond facilities shall remain in effect for 5 years from the approval date.

(b) After division review, long term produced water recycling pond facility permits may be renewed for successive 5-year terms.

(3) Temporary produced water recycling tank facility permit and renewal.

(a) Operating approvals issued by the division for temporary produced water recycling tank facilities shall remain in effect for 12 months or less from the approval date.

(b) After division review, temporary produced water recycling tank facility permits may be renewed for successive six month terms, up to 24 additional months.

(4) Waste crude oil treatment facilities permit and renewal.

(a) Operating approvals issued by the division for waste crude oil treatment facilities shall remain in effect for five years from the approval date.

(b) After division review, waste crude oil treatment facility permits may be renewed for successive 5-year terms.

(5) Other potential E and P product recycling facilities permit and renewal.

(a) Operating approvals for other potential E and P product recycling facilities will be issued for a length of time determined appropriate by the division, based on the description of the facility, but shall remain in effect no longer than 5-years.

(b) After division review, other potential E and P product recycling facility permits may be renewed for up to successive 5-year terms.

(6) Before renewal approval, the division shall review the operation, compliance history, bonding and technical requirements for the E and P recycling facility.

(a) The division, after notice to the operator, may require modifications of the E and P recycling facility permit, including modifications necessary to the facility permit terms and conditions consistent with statutes, rules of judicial decisions.

(7) An application may be denied if:

(a) A complete application is not submitted;

(b) The application does not meet the appropriate requirements of Sections R649-9-3 through R649-9-7;

(c) The proposed E and P recycling facility or modification may be detrimental to fresh water, public health, safety or the environment; or

(d) An applicant or owner in the facility has a history of failure to comply with division rules and orders, state or federal environmental laws, or is in current violation of a division or board order requiring corrective action.

(8) Revocation, suspension, or modification of a permit.

(a) The division may revoke, suspend, or impose additional operating conditions or limitations on an E and P recycling facility permit at any time, for good cause, after notice to the operator.

(b) The division may suspend an E and P recycling facility permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to freshwater, public health, safety or the environment.

(c) Suspension of an E and P recycling facility permit may be for a fixed period or until the operator remedies the violation or potential violation.

(d) If the division suspends an E and P recycling facility permit, the recycle facility may not accept E and P products for recycling during the suspension period.

(e) Any modifications should be submitted to the division.

(9) Transfer of a permit.

(a) The operator may not transfer a permit without the division's prior written approval.

(b) A request for transfer of a permit shall identify officers, directors and owners of the transferee.

(c) Unless the director orders otherwise, public notice or hearing are not required for the transfer request's approval.

(d) If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the transferee may request, within 10 days of receipt of the notice, a public hearing before the board.

(e) Until the division approves the transfer and the replacement bonding as determined under Section R649-9-9, is in place, the division may not release the transferor's financial assurance.

**R649-9-11. General Construction and Inspection Requirements for E and P Recycling Facilities.**

(1) Division personnel shall be given a reasonable opportunity for inspection of any E and P recycling facility during the construction and operation of the facility.

(2) The division shall be notified at least 72 hours before the installation of leak detection systems or liners.

(3) The division shall be notified after completion of facility construction so that a final inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.

(4) Failure to meet the requirements and standards for construction and operation of a E and P recycling facility shall be considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

**R649-9-12. Reporting and Recordkeeping Requirements for E and P Recycling Facilities.**

(1) Unauthorized discharges or spills from E and P recycling facilities including water observed in a leak detection system shall be reported, within 24 hours, to the division.

(2) Each operator of an E and P recycle facility shall keep records, which shall be available for inspection by the division, for at least six years, showing at a minimum the following:

(a) Date and time E and P product was received, origin of the sample or location where it was taken, volume, type, transporter, and generator of the E and P product; and

(b) Volume and type of E and P product recycled.

(3) Reporting and record keeping specific to long term produced water recycling pond facilities.

(a) Each operator of a long term produced water recycling pond facility, shall report to the division on a quarterly basis the following:

(i) The volume of produced water received during the quarter;

(ii) The volume of produced water reused in oil and gas operations;

(iii) The volume of produced water used for reinjection in Class II wells; and

(iv) Results of the weekly leak detection system inspections.

(b) Berms and outside walls shall be inspected quarterly and after a major rainfall or windstorm. Berm erosion or loss of integrity shall be reported to the division and may require immediate action.

(c) Accumulation of oil or other solids on the surface of a long term produced water recycling pond that are not removed within 48 hours shall be reported to the division.

(d) The occurrence of water in a leak detection system during operation constitutes liner failure and requires immediate action.

(i) The division has the option of allowing the operator a short period to take corrective action.

(ii) Further utilization will be allowed only after liner repairs and an inspection by the division, which inspection shall occur within ten days after the operator has taken corrective action and notified the division regarding the action taken to resolve the situation.

**R649-9-13. Closure and Post Closure of E and P Recycling Facilities.**

(1) A plan for final closure of an E and P recycling facility shall be submitted to the division, for approval upon cessation of operations. The closure plan shall include the following:

(a) Provisions for removal of all equipment, buildings, fences and roads at the site;

(b) A plan to restore the impacted surface area to a safe and stable condition or to the condition that existed before the construction of the E and P recycling facility;

(c) Removal of solid and hazardous waste to an appropriate nonhazardous solid waste facility or a hazardous waste disposal facility as applicable, in accordance with the requirements of Title 19, Chapter 6, Solid and Hazardous Waste Act and the associated rules;

(d) Removal of berms and disposal method for liners;

(e) Plans and procedures for sampling and testing soils and ground water at the site. The operator shall notify the division at least 48 hours in advance to witness soil sampling;

(i) Soils shall meet division cleanup standards or background levels whichever is less stringent;

(f) A post closure monitoring plan if required by the division; and

(g) Proof of a signed post closure plan agreement with the current landowner.

(2) During closure operations, the operator shall maintain the E and P recycling facility to protect freshwater, public health, safety and the environment.

(3) The bond for the E and P recycling facility will be released when the division approved closure plan requirements have been met, as determined by the division.

**R649-9-14. Variances from Requirements and Standards.**

(1) Requests for approval of a variance from any of the requirements or standards of Rule R649-9 shall be submitted to the director in writing and provide information as to the circumstances that warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied. The director shall review the request within 45 days and notify the requesting party of the decision to approve or deny the variance. Upon receiving a denial, the requesting party may appeal the denial to the board.

**KEY: oil and gas law**

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